

CHAPTER 151. LOCAL EARNED INCOME TAX**GENERAL PROVISIONS**

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**WITHDRAWAL AND ESTABLISHMENT OF A NEW TAX
COLLECTION COMMITTEE**

- 151.61. Withdrawal and establishment of a new tax collection committee.

Authority

The provisions of this Chapter 151 issued under Chapter 5 of The Local Tax Enabling Act (53 P.S. §§ 6924.501—6924.517), unless otherwise noted.

Source

The provisions of this Chapter 151 adopted August 31, 2018, effective September 1, 2018, 48 Pa.B. 5457, unless otherwise noted.

GENERAL PROVISIONS**§ 151.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Local Tax Enabling Act (53 P.S. §§ 6924.101—6924.901).

Out-of-State employer—An employer that does not have a place of business in this Commonwealth. An employer is not an out-of-State employer if the employer has a place of business in this Commonwealth even if the employer's primary business operations occur out of State.

§ 151.2. Procedures for filing adjusted declarations of estimated net profits.

Under section 502(c)(2)(iv) of the act (53 P.S. § 6924.502(c)(2)(iv)), every taxpayer who has filed the declaration of taxpayer's estimated net profits required under section 502(c) of the act and who anticipates additional net profits not previously declared or has overestimated anticipated net profits shall file, on or before April 15 of the current year, July 15 of the current year, October 15 of the current year or January 15 of the succeeding year, whichever date next follows the date on which the taxpayer first anticipates the change in anticipated net profits, an adjusted declaration of estimated net profits and pay to the resident tax officer on or before the quarterly payment dates that remain after the filing of the adjusted declaration, beginning with the quarterly payment date in which the adjusted declaration is filed, equal installments of the tax due as reported on the adjusted declaration of estimated net profits.

§ 151.3. Procedures for filing taxable income not subject to withholding.

Under section 502(c)(3) of the act (53 P.S. § 6924.502(c)(3)), every taxpayer who receives other taxable income not subject to withholding under section 512(3) of the act (53 P.S. § 6924.512(3)) shall make and file with the resident tax officer a quarterly return on or before April 15 of the current year, July 15 of the current year, October 15 of the current year and January 15 of the succeeding year setting forth the aggregate amount of actual or estimated taxable income not subject to withholding attributable to the taxpayer during the 3-month periods

ending March 31 of the current year, June 30 of the current year, September 30 of the current year and December 31 of the current year, respectively, and subject to income tax, together with the source, nature, anticipated frequency and location of the taxable income. Every taxpayer filing a return shall, at the time of filing the return, pay to the resident tax officer the amount of income tax due or estimated to be due. The tax officer may waive the requirement to file a quarterly return and payment of income tax when the taxable income is received on less than a quarterly frequency or is anticipated to be an aggregate amount of less than \$12,000 annually.

§ 151.4. Filing of estimated tax by taxpayers whose major source of gross income is from farming.

Under section 502(d) of the act (53 P.S. § 6924.502(d)), a declaration of estimated tax of an individual having an estimated gross income from farming for the taxable year which is at least 2/3 of the individual's total estimated gross income for the taxable year may be filed at any time on or before January 15 of the succeeding year, but if the individual files a final return and pays the entire tax by March 1, the return may be considered as the individual's declaration due on or before January 15.

§ 151.5. Refunds.

A tax officer shall refund overpayment of taxes to the taxpayer in accordance with 53 Pa.C.S. §§ 8421—8438 (relating to Local Taxpayers Bill of Rights Act).

§ 151.6. Publication of a Policy and Procedure Manual.

The Department will develop and post on its web site a Policy and Procedure Manual. The Department will update the Policy and Procedure Manual on an annual basis. The Department's web site includes a library of standardized forms, reports, notices, returns and schedules developed in consultation with the Department of Revenue to be utilized by the local governments and the regulated community. The Department's previously-referenced web site is available at <http://dced.pa.gov/local-government/local-income-tax-information>.

WITHHOLDING

§ 151.11. Registration of employers.

(a) Under section 512(a)(1) of the act (53 P.S. § 6924.512(a)(1)), if an employer has a place of business within a tax collection district and employs one or more persons, other than domestic servants, for compensation, the employer shall register with the tax officer for that tax collection district within 15 days after becoming an employer.

(b) An employer shall collect and maintain the information as required under section 512 of the act. An employer shall require each new employee to complete

a Local Earned Income Taxpayer Residency Certification form as provided by the Department to help identify the political subdivision where an employee is domiciled and employed. Additionally, an employer shall require each current employee who establishes a new address or domicile to complete the Local Earned Income Taxpayer Residency Certification form. The employer shall retain residency information provided by the employee and, upon request, provide this information to the tax officer to reconcile, correct or otherwise confirm the political subdivision information for the employee.

§ 151.12. Voluntary withholding for resident employees employed outside of a tax collection district.

Under section 512 of the act (53 P.S. § 6924.512), an out-of-State employer who employs a resident of this Commonwealth at a work location outside of this Commonwealth is not required to withhold the local earned income tax. An out-of-State employer may voluntarily agree with the employee to withhold and remit the tax along with the appropriate forms to the tax officer of the tax collection district in which the employee resides. Every employer having a place of business within a tax collection district and employing one or more persons, other than domestic servants, shall withhold the greater of the employee's resident tax or the employee's nonresident tax.

§ 151.13. Elective filing and remittance by multi-work location employers.

Under section 512(a)(5) of the act (53 P.S. § 6924.512(a)(5)), an employer with more than one place of business in more than one tax collection district may elect to remit the tax withheld from all of its employees in all of its work locations in this Commonwealth for the preceding month and file, on or before the last day of the month succeeding the month for which the return under section 512(a)(4) of the act is due, one single combined monthly return as follows:

- (1) To be eligible to file combined returns and make combined payments, the employer shall file:
 - (i) A notice of its intention to file combined returns and make combined payments with the tax officer for each place of employment at least 1 month prior to filing its first combined return or making its first combined payment.
 - (ii) Its combined return and remit its combined payment electronically on a monthly, rather than quarterly, basis.
- (2) An employer with payroll operations located within one tax collection district shall file the combined return and remittance of earned income taxes withheld to the tax officer in that tax collection district. An employer with payroll operations located within more than one tax collection district shall file the combined return and remittance of earned income taxes withheld to the tax officer of any tax collection district in which any of the employer's payroll operations are located. If the tax officer declines in writing to receive the com-

bined filing, the employer may choose to file a combined return with any tax officer in a tax collection district where the employer maintains a place of business employing one or more employees.

(3) An eligible employer's election to file combined returns and make combined payments does not alter an employee's workplace for purposes of nonresident tax liability.

(4) An employer may not select a tax officer to receive combined tax returns and remittances more frequently than on a tax year basis. The selection of a tax officer shall be made at the time of filing the tax return.

(5) If an employer outsources payroll functions to a payroll processing company, the employer's place of business that forwards payroll data to the company is deemed the employer's payroll operations location. The location of the payroll processing company is not the employer's payroll operations location.

TAX OFFICER

§ 151.21. Mandatory education for tax officers.

(a) *Initial certification.* Persons and entities seeking appointment as tax officers shall take and achieve a passing grade of 70% or above on the initial certification exam given by or on behalf of the Department.

(b) *Continuing certification.* Persons and entities seeking to maintain appointments as tax officers shall take and achieve a passing grade of 70% or above on the annual continuing certification exam given by or on behalf of the Department.

Cross References

This section cited in 12 Pa. Code § 151.23 (relating to duties of a tax collection committee in selecting a tax officer); and 12 Pa. Code § 151.24 (relating to duties of an appointed tax officer).

§ 151.22. Minimum number of persons required to receive mandatory education and meet the qualifications and requirements for tax officers.

A tax officer or a person or entity seeking appointment as a tax officer shall designate at least one person for every five counties for which the tax officer has been named a tax officer to satisfy the mandatory education requirements under section 508(e) of the act (53 P.S. § 6924.508(e)) and meet the qualifications and requirements for tax officers under this chapter. A tax officer may designate itself to satisfy this requirement. If the tax officer is an entity rather than a natural person, the tax officer shall appoint one natural person employed by the tax officer for every five counties served by the tax officer.

Cross References

This section cited in 12 Pa. Code § 151.23 (relating to duties of a tax collection committee in selecting a tax officer); and 12 Pa. Code § 151.24 (relating to duties of an appointed tax officer).

§ 151.23. Duties of a tax collection committee in selecting a tax officer.

Before appointing or reappointing a tax officer for any tax collection district, a tax collection committee shall:

- (1) Verify that the proposed tax officer meets the following requirements:
 - (i) Has undergone a SSAE 16 audit (or other fiscal control audit meeting or exceeding SSAE 16 audit standards and approved by the Department in writing) at least once in the last 2 years.
 - (ii) Has certified with the tax collection committee that it does not use a third party to process employer or individual taxpayer tax returns.
 - (iii) Has demonstrated timely earned income tax distributions if the tax officer already serves as a tax officer for another tax collection committee.
 - (iv) Has disclosed in writing any claim, including, but not limited to, litigation filed in either state or Federal court, brought by a municipality, school district, tax collection committee or other tax officer against the tax officer or its insurer regarding the collection or distribution of earned income taxes.
 - (v) Meets the requirements of §§ 151.21 and 151.22 (relating to mandatory education for tax officers; and minimum number of persons required to receive mandatory education and meet the qualifications and requirements for tax officers).
 - (vi) Has not been convicted of a felony involving fraud, extortion or dishonesty in any jurisdiction.
 - (vii) Has not engaged in conduct which significantly adversely reflects on the proposed tax officer's credibility, honesty or integrity.
 - (viii) Is able to attain the bond required under section 509(d) of the act (53 P.S. § 6924.509(d)).
- (2) Receive a minimum of five positive references for the tax officer. The references shall be contacted independently by the tax collection committee and may be provided by the tax officer.
- (3) Conduct at least one onsite visit to the office of the tax officer prior to selecting the tax officer. A minimum of three tax collection committee delegates shall attend the onsite visit.
- (4) Include in the agreement between the tax collection committee and the tax officer a termination clause that allows the tax collection committee to terminate the agreement if the tax officer fails to meet the requirements of this section. The termination clause must provide that the tax collection committee shall terminate the agreement no later than 30 days after it provides written notice to the tax officer that the tax officer has failed to comply with the requirements of this section and the tax officer has failed to cure the noncompliance within the 30-day notice period.

Cross References

This section cited in 12 Pa. Code § 151.24 (relating to duties of an appointed tax officer).

§ 151.24. Duties of an appointed tax officer.

A tax officer shall notify the Department and all the tax collection committees for which it collects taxes if it fails to continually meet the requirements of §§ 151.21—151.23 (relating to mandatory education for tax officers; minimum number of persons required to receive mandatory education and meet the qualifications and requirements for tax officers; and duties of a tax collection committee in selecting a tax officer). Failure of the tax officer to comply with this section may result in the tax officer losing its certification.

§ 151.25. Point of contact for a tax collection committee.

Each tax collection committee shall identify to the Department a point of contact who is available during normal business hours. The point of contact does not need to be a delegate of the tax collection committee. Each tax collection committee shall provide the point of contact's phone number, e-mail address and physical address. The tax collection committee shall notify the Department if the point of contact changes.

§ 151.26. Bond amount for tax officers.

(a) Section 509(d) of the act (53 P.S. § 6924.509(d)) requires that tax collection committee shall fix the amount of the bond in an amount equal to the maximum amount of taxes that may be held in the possession of the tax officer at any given time or an amount sufficient, in combination with fiscal controls, insurance, and other risk management and loss prevention measures used by the tax collection district, to secure the financial responsibility of the tax officer.

(b) When a tax collection committee agrees to a bond amount less than the maximum amount of taxes that may be held in the possession of the tax officer at any given time, the tax collection committee shall do so by resolution. The tax collection committee shall expressly indicate in the resolution the reasons why it has agreed to a lesser bond amount.

MEDIATION**§ 151.41. Rules for mediation.**

The following practices and procedures for mediation apply.

(1) One or more affected political subdivisions shall give written notice to the tax collection committee and the Department of the desire to submit the disputed matter to mediation by the Department. Thereafter, the political subdivision, tax collection committee and tax officer shall mediate in accordance with this section.

- (i) Only a political subdivision may initiate a mediation request.
- (ii) A political subdivision shall send the notice by regular mail.
- (iii) The notice must include a statement indicating whether or not the dispute is subject to mandatory mediation. If a dispute involves a 10% or

greater deviation from taxes received in the previous tax year, the parties are subject to mandatory mediation. If a dispute involves less than the 10% threshold, the parties may agree to undergo voluntary mediation in accordance with this section.

(2) Upon receipt of the notice, the Department will provide a copy of the notice to the tax officer. Within 20 days of the submission of the notice, the political subdivision, tax collection committee and tax officer shall each submit a written statement, not exceeding five pages, to the Department and the affected parties stating their positions as to the disputed and undisputed facts and issues in the case and whether prior settlement negotiations have occurred. The Department may decline to consider any information within a statement filed after the 20-day deadline.

(3) Within 30 days of the Department's receipt of the notice, the Department will determine whether the dispute meets the threshold conditions for mandatory mediation set forth in paragraph (1)(iii).

(i) If the issue being mediated is the same for more than one political subdivision, the political subdivisions shall combine their notices into one notice, which may not exceed five pages.

(ii) The Department's determination is final and not subject to appeal.

(iii) The Department will provide written notice of its determination to all affected parties within 5 days of its determination. The Department may provide the notice by e-mail, if available.

(iv) The Department will assess a fee to cover costs incurred by the Department in reviewing the mediation notice submitted by the political subdivision and the responses thereto. The Department will equitably apportion the costs among the affected parties by assessing each affected party only for the costs incurred by the Department when reviewing that particular affected party's notice and written statements. If two or more affected parties file a joint statement or notice, the costs incurred by the Department for reviewing the joint filing will be equally divided among those jointly-filing affected parties. The Department will notify the parties in writing of the fee assessment. The fee is not refundable and not subject to appeal. The parties shall pay their assessed portion of the fee by check within 30 days of notification of assessment by the Department.

(4) If the Department determines that the dispute requires mandatory mediation, the Department will refer the matter to the Pennsylvania Office of General Counsel Dispute Resolution Coordinator simultaneously with the written notice provided under paragraph (3)(iii). The coordinator will appoint an Office of General Counsel mediator to mediate the dispute. The selection of the mediator is final and not subject to appeal. The mediator will seek the parties' mutual agreement to extend the time period for mediation if the mediator and the Department believe that the extension may be necessary. The mediator will complete the mediation no later than 30 days following the Department's writ-

ten notice provided in paragraph (3)(iii) unless the time period is extended by the mutual agreement of the parties to the mediation. Except as otherwise provided in this section, the mediation will be conducted under the rules in the Office of General Counsel Mediation Handbook. If the mediator incurs costs or imposes other mediation fees upon the parties, the costs or fees, or both, will be equitably assessed. The assessment is final and not subject to appeal.

(i) The parties shall participate in the mediation in good faith. The parties shall have an official authorized to settle the matter on their behalf available at the mediation. The mediator may require a party that fails to participate in good faith to pay all the costs of the mediation.

(ii) The mediator may request that Department personnel be present for all or a portion of the mediation.

(5) If the Department determines that the dispute involves voluntary mediation, all parties involved in the mediation, including the Department, may agree to mediate the issue through the Pennsylvania Office of General Counsel Dispute Resolution Program. The agreement to voluntarily mediate shall be made within 5 days of the Department's written notice provided in paragraph (3)(iii). Upon agreement by the parties to voluntary mediation, the Department will immediately refer the matter to the Office of General Counsel Dispute Resolution Coordinator. The coordinator will appoint a mediator to mediate the matter. The selection of the mediator is final and not subject to appeal. The mediator will seek the parties' mutual agreement to extend the time period for mediation if the mediator and the Department believe that the extension may be necessary. The mediator will complete the mediation no later than 30 days following the agreement by the parties to mediate the issue unless the time period is extended by the mutual agreement of the parties to the mediation. Except as otherwise provided in this section, the mediation will be conducted under the rules in the Office of General Counsel Mediation Handbook. If the mediator incurs costs or imposes other mediation fees upon the affected parties, the costs or fees, or both, will be equitably assessed. The cost assessment is final and not subject to appeal.

(i) The parties shall participate in the mediation in good faith. The parties shall have an official authorized to settle the matter on their behalf available at the mediation. The mediator may require a party that fails to participate in good faith to pay all the costs of the mediation.

(ii) The mediator may request that Department personnel be present for all or a portion of the mediation.

(6) Mediation sessions are closed to the public and are not subject to the requirements of 65 Pa.C.S. Chapter 7 (relating to Sunshine Act).

(7) Offers or settlements made in a mediation session, excluding the final written settlement agreement, are not admissible as evidence in subsequent judicial or administrative proceedings in accordance with 42 Pa.C.S. § 5949 (relating to confidential mediation communications and documents).

(8) If a settlement is reached during the mediation, the Department will prepare a written settlement agreement and obtain all necessary signatures within 30 days of the agreement of the parties to settle the issue. The settlement agreement is binding upon the parties to the agreement. The settlement agreement is subject to the Right-to-Know Law (65 P.S. §§ 67.101—67.3104). The agreement is admissible as evidence in subsequent judicial or administrative proceedings in accordance with the Pennsylvania Rules of Court, the Pennsylvania Rules of Evidence and 42 Pa.C.S. § 5949.

(9) If the mediation does not result in a written agreement signed by the parties as provided in paragraph (8), the mediation is deemed unsuccessful unless all parties and the Department agree in writing to extend the mediation. The mediator may determine that the mediation is unsuccessful and terminate the mediation if the parties have not executed a settlement agreement by the ending date of the extension or of any further extension agreed upon by the affected parties and the mediator.

PROCUREMENT

§ 151.51. Procurement of goods and services—general rule.

Tax collection committees shall procure goods and services in accordance with section 1802 of The County Code (16 P.S. § 1802) through competitive sealed bids. References in section 1802 of The County Code to county officials shall be deemed to refer to a designated procurement officer of the tax collection committee.

WITHDRAWAL AND ESTABLISHMENT OF A NEW TAX COLLECTION COMMITTEE

§ 151.61. Withdrawal and establishment of a new tax collection committee.

(a) *Resolution to withdraw.* Under section 505(m) of the act (53 P.S. § 6924.505(m)), a political subdivision governed by a tax collection committee established under section 505(m) of the act may, within the 90-day period ending November 15, 2013, and November 15 every fourth year thereafter, adopt and file with the Department and the tax collection committee a resolution evidencing its desire to withdraw from governance by the tax collection committee as of January 1 of the second succeeding calendar year. If a majority of the governing bodies of the political subdivisions adopt resolutions evidencing a desire to withdraw, a new tax collection committee shall be established in accordance with the following:

(1) The establishment of a new tax collection committee may not alter the geographic boundaries or the political subdivisions of the tax collection district.

(2) The old tax collection committee shall stay in effect through December 31 of the first succeeding calendar year after the November 15 date to adopt resolutions evidencing a desire to withdraw.

(3) The new tax collection committee shall become effective as of January 1 of the second succeeding calendar year after the November 15 date to adopt resolutions evidencing a desire to withdraw.

(4) Other than the timing requirements as provided for in this section, the new tax collection committee shall have all the obligations, duties and powers and be subject to the quorum and voting rights provisions provided for in Chapter 5 of the act (53 P.S. §§ 6924.501—6924.517) and this chapter.

(b) *Delegates.*

(1) The governing body of each political subdivision within the tax collection district that imposed an income tax prior to July 1 of the same year the November 15 date to adopt resolutions evidencing a desire to withdraw occurs shall appoint one voting delegate and one or more alternates to represent the political subdivision on the new tax collection committee by September 15 of the succeeding calendar year after the November 15 date to adopt resolutions evidencing a desire to withdraw. The governing body of each political subdivision that after June 30 of the same year as the November 15 date to adopt resolutions evidencing a desire to withdraw occurs imposes an income tax for the first time shall appoint one voting delegate and one or more alternates to represent the political subdivision on the tax collection committee. A voting delegate or alternate shall serve at the pleasure of the governing body of the political subdivision.

(2) The governing body of each political subdivision within the tax collection district that prior to July 1 of the same year as the November 15 date to adopt resolutions evidencing a desire to withdraw occurs does not impose an income tax may appoint one nonvoting delegate and one or more alternates to represent the political subdivision on the tax collection committee. If after June 30 of the same year as the November 15 date to adopt resolutions evidencing a desire to withdraw occurs the political subdivision imposes an income tax, the nonvoting delegate shall become a voting delegate to represent the political subdivision on the tax collection committee.

(c) *First meeting.* The first meeting of the tax collection committee in the tax collection district shall be on or before May 15 of the year subsequent to the November 15 date to adopt resolutions evidencing a desire to withdraw. The chair of the county commissioners or the chief executive of the county in which the tax collection district is primarily located or the chair's designee shall schedule the first meeting of the tax collection committee and provide, at least 21 days before the meeting, public notice, as required under 65 Pa.C.S. § 703 (relating to definitions), and notice by first class mail by March 15 of the year subsequent to the

November 15 date to adopt resolutions evidencing a desire to withdraw to the Department and to the governing body of each political subdivision located in the tax collection district.

(d) *Establishment of tax collection committee.* The chair of the county commissioners or the chair's designee or the chief executive of the county or the chief executive's designee shall convene the first meeting of the tax collection committee, conduct the meeting and record all votes until a chairperson, vice chairperson and secretary are elected by the tax collection committee. The voting delegates of the tax collection committee shall elect a chairperson and a vice chairperson, each of whom shall be duly appointed voting delegates, and a secretary who may be a duly appointed voting delegate. If the secretary is a duly appointed voting delegate, this shall be noted on the record at all meetings. The chairperson shall schedule meetings, set the agenda, conduct meetings, record votes and perform other duties as determined by the tax collection committee. The secretary shall maintain the minutes and records of the tax collection committee and provide notices to each delegate and alternate appointed to the tax collection committee.

(e) *Bylaws.* Before July 16 of the year subsequent to the November 15 date to adopt resolutions evidencing a desire to withdraw, the delegates of the new tax collection committee shall adopt bylaws to govern the tax collection committee and notify the Department within 30 days of adoption. The Department will provide sample bylaws to the tax collection committee. The tax collection committee shall provide written notice to each delegate and alternate delegate informing each delegate and alternate delegate that the adoption or amendment of bylaws will be considered at a meeting. The written notice must include copies of the proposed bylaws or amendments. The bylaws for each tax collection committee must include:

- (1) Rules of procedure, quorum requirements, voting rights and provisions for managing the affairs of the tax collection committee.
- (2) A list of officers, their terms and powers, and a process for their election.
- (3) Meetings, including special meetings.
- (4) The process for adopting and amending bylaws.
- (5) The procedure for the addition of new political subdivisions to the tax collection committee.

(f) *Election of officers.* Upon the election of any new officers, the tax collection committee shall notify the Department within 30 days and shall provide the Department with the name and address of each officer.

(g) *Appeals board.* By September 30 of the year subsequent to the November 15 date to adopt resolutions evidencing a desire to withdraw, the new tax collection committee shall establish an appeals board under section 505(j) of the act and this chapter.