

### CHAPTER 113. WITHHOLDING OF TAX

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#### § 113.1. Employers required to withhold tax.

An individual, partnership, association, corporation, organization, fiduciary, governmental body, unit, agency or other entity who is an employer, makes payment of compensation and maintains an office or transacts business within this Commonwealth is subject to this chapter, whether or not a paying agency is maintained within this Commonwealth.

(1) The phrase "transacting business within this Commonwealth" includes having or maintaining within this State, directly or indirectly, an office, distribution house, sales house, warehouse or other place of business, or operating within this Commonwealth by any agent or other representative under the authority of the employer or its subsidiary, irrespective of whether the place of business or agent or other representative is located in this Commonwealth permanently or temporarily, or whether the employer is licensed to do business in this Commonwealth.

(2) The term "agent" is broader than the term employe and includes anyone acting under the authority of the principal in an agency capacity. It does not matter that an agent may engage in business on his own account, for other persons or as an independent contractor acting as an agent.

#### Authority

The provisions of this § 113.1 amended under section 354 of the Tax Reform Code of 1971 (72 P. S. § 7354).

#### Source

The provisions of this § 113.1 amended December 10, 1999, effective December 11, 1999, 29 Pa.B. 6249. Immediately preceding text appears at serial page (205379).

#### § 113.2. Compensation subject to withholding.

All compensation shall be subject to withholding of tax by an employer. Regulations for residents and nonresidents shall be as follows:

(1) *Residents.* The following procedure shall be utilized by employers withholding Commonwealth Income Tax from a resident:

(i) If a Commonwealth resident renders service in this Commonwealth, his employer shall withhold Commonwealth tax from his compensation.

(ii) If the employer is subject to the jurisdiction of this Commonwealth and a Commonwealth resident is rendering services as his employee in another state, the following procedure shall be followed:

(A) If the other state does not have an income tax, he shall withhold on the compensation he pays to the employee.

(B) If the other state does have an income tax and the employer is withholding the tax, the employer is not required to withhold Commonwealth tax.

(C) If the employer is not withholding income tax for the state in which the services are rendered, he shall withhold Commonwealth tax.

(iii) If a Commonwealth resident is rendering services partly within and partly outside this Commonwealth, the following procedure shall be followed:

(A) If the other state does not have an income tax, he shall withhold on the entire compensation he pays to the employee.

(B) If the other state does have an income tax and the employer is withholding the tax, the following employer shall also withhold the following Commonwealth income tax on compensation for services rendered within this Commonwealth:

(I) The amount of compensation attributable to services within this Commonwealth shall be that proportion of the total compensation which the total number of working days employed within this Commonwealth bears to the total number of working days employed both within and outside this Commonwealth, exclusive of nonworking days. Nonworking days are normally considered to be Saturdays, Sundays, holidays, and days of absence because of illness or personal injury, vacation, or leave with or without pay.

(II) With respect to earnings of a traveling salesman or other employee whose compensation depends directly on the volume of business transacted by him, the amount attributable to services within this Commonwealth shall be that proportion of the compensation received which the volume of business transacted by him within this Commonwealth bears to the total volume of business transacted by him both within and outside this Commonwealth.

(C) If the employer is not withholding income tax for the state in which the services are rendered, he shall withhold Commonwealth tax on the entire compensation.

(2) *Nonresident.* The following procedure shall be utilized by employers withholding Commonwealth income tax from a nonresident:

(i) The tax shall be deducted and withheld on compensation paid to nonresident employees for services performed in this Commonwealth.

Accordingly, if a nonresident employee performs all of his services in this Commonwealth, the tax shall be deducted and withheld from all compensation paid him.

(ii) If a nonresident employee performs services partly within and partly outside this Commonwealth, only compensation for services within this Commonwealth shall be subject to withholding.

(A) The amount of compensation attributable to services within this Commonwealth shall be that proportion of the total compensation which the total number of working days employed within this Commonwealth bears to the total number of working days employed both within and outside this Commonwealth, exclusive of nonworking days. Nonworking days are normally considered to be Saturdays, Sundays, holidays, and days of absence because of illness or personal injury, vacation, or leave with or without pay.

(B) With respect to earnings of a traveling salesman or other employee whose compensation depends directly on the volume of business transacted by him, the amount attributable to services within this Commonwealth shall be that proportion of the compensation received which the volume of business transacted by him within this Commonwealth bears to the total volume of business transacted by him both within and outside this Commonwealth.

(iii) The portion of compensation allocable to the Commonwealth may be determined by the employer on the basis of the preceding year's experience, or on the basis of an estimate for the current year made by the employee or his employer. In either case, the employer shall make any necessary adjustment during the year to assure that the proper amount is withheld for the current year.

(iv) An employer shall withhold on all compensation paid to a nonresident who works partly within and partly outside this Commonwealth unless the employer maintains adequate current records to determine accurately the amount of compensation from Commonwealth sources.

(3) *Tips.*

(i) Every employee who, in the course of his employment, receives in any calendar month cash tips which are wages as defined in section 3401(a) of the IRC (26 U.S.C.A. § 3401(a)) shall report those tips in one or more written statements furnished to his employer on or before the 10th day following that month.

(ii) Employers are required to deduct and withhold tax only on tips of which the employer has the control, receipt, custody or payment or tips that are reported by the employee and only to the extent that the employer can collect the tax by deducting it from the employee's compensation exclusive of tips.

**Authority**

The provisions of this § 113.2 amended under section 354 of the Tax Reform Code of 1971 (72 P. S. § 7354).

**Source**

The provisions of this § 113.2 amended December 26, 2003, effective December 27, 2003, 33 Pa.B. 6423. Immediately preceding text appears at serial pages (261983) to (261984) and (205381).

**§ 113.3. Computing withholding of Pennsylvania Personal Income Tax.**

(a) The Pennsylvania Personal Income Tax to be withheld shall be at the rate prescribed in Article III of the TRC (72 P. S. §§ 7301—7361). For example, the rate applicable to the first pay period beginning on or after:

January 1, 1983 is 2.45

July 1, 1984 is 2.35

January 1, 1986 is 2.20

September 1, 1986 is 2.10

(1) *Regular compensation.* Computation of withholding tax on regular compensation shall be made in accordance with the following:

(i) For a payroll period an employer shall compute the tax to be withheld from the compensation of an employee by multiplying the compensation by the rate prescribed in Article III of the TRC.

(ii) The term “payroll period” means a period for which a payment of compensation is ordinarily made to an employee by his employer and may be a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual or annual period.

(2) *Supplemental or other compensation.* If supplemental, such as commissions, overtime pay, vacation pay, bonuses, and so forth, or other compensation is received by an employee, an employer shall determine the tax to be withheld by adding the supplemental or other compensation for the current payroll period and multiplying the amount by the rate prescribed in Article III of the TRC.

(b) In addition to the tax required to be withheld, an employer and employee may agree that an additional amount be withheld from the employee’s compensation. The agreement shall be in writing, and the amount deducted and withheld under the agreement between the employer and employee shall be considered as tax required to be deducted and withheld, and statutes and regulations applicable to the tax are applicable with respect to an amount deducted and withheld under the agreement.

(c) Except as provided in subsection (d):

(1) Any amount lawfully deducted by an employer from the remuneration of an employee shall be deemed to be a part of the employee’s remuneration and to have been paid to the employee as compensation at the time the deduction is made.

(2) Any amount paid by an employer on behalf of an employee without deduction from the remuneration of, or other reimbursement from, the employee on account of any liability or obligation of, or payment required from, an employee shall be deemed to be paid to the employee as compensation at the time the payment is made.

(3) Any payment made to an employee, third party or fund under a cash or deferred arrangement under which an employee may unilaterally elect to have the employer make payments to the third party or fund for the benefit of the

employee or to the employee directly in cash shall be deemed to be paid to the employee as compensation at the time the payment is made.

(4) Any payment made to an employee, third party or fund under an arrangement under which an employee may unilaterally choose between two or more benefits consisting either of cash and coverage under a plan or coverage under two or more plans shall be deemed to be paid to the employee as compensation at the time the payment is made.

(d) Amounts specified in a cafeteria plan document as being available to the employee for the purpose of selecting or purchasing benefits under a plan or as additional cash remuneration received in lieu of coverage under a plan are excludible from tax and withholding if the following apply:

(1) They were not actually or constructively received, after taking section 125 of the IRC (26 U.S.C.A. § 125) into account.

(2) The benefits selected or purchased are nontaxable under the IRC when offered under a cafeteria plan described in section 125 of the IRC.

(3) The payments made for the plan would be nontaxable under § 101.6 (relating to compensation) if made by the employer outside a cafeteria plan described in section 125 of the IRC.

#### Authority

The provisions of this § 113.3 amended under section 354 of the Tax Reform Code of 1971 (72 P. S. § 7354).

#### Source

The provisions of this § 113.3 amended January 20, 1984, effective January 21, 1984, 14 Pa.B. 222; amended January 2, 1987, effective January 3, 1987, 17 Pa.B. 59; amended December 26, 2003, effective December 27, 2003, 33 Pa.B. 6423. Immediately preceding text appears at serial pages (205381) to (205382).

#### Cross References

This section cited in 61 Pa. Code § 113.11 (relating to special deposits and trust accounts).

### § 113.3a. Employer identification number.

An employer shall use both the Federal and Pennsylvania employer identification numbers to report all Pennsylvania withholding. Employers who have not yet received a Federal employer identification number will be assigned a temporary Pennsylvania number until the Federal employer identification number is obtained, at which time the Department shall be notified. If an employer has multiple divisions using the same Pennsylvania employer identification number but remitting and reconciling withholding tax separately, the employer shall request a separate Pennsylvania number for each division.

#### Authority

The provisions of this 113.3a issued under section 354 of the Tax Reform Code of 1971 (72 P. S. § 7354).

#### Source

The provisions of this § 113.3a adopted December 26, 2003, effective December 27, 2003, 33 Pa.B. 6423.

**§ 113.3b. Registration.**

Every employer having an office or transacting business within this Commonwealth and making payment of wages for the first time to one or more nonresident individuals performing services on behalf of the employer within this Commonwealth or to one or more resident individuals shall, within 10 business days of the payment, register with the Department by completing and filing Form PA-100 Pennsylvania Combined Registration Form available on its website or at its Harrisburg or district offices.

**Authority**

The provisions of this 113.3b issued under section 354 of the Tax Reform Code of 1971 (72 P. S. § 7354).

**Source**

The provisions of this § 113.3b adopted December 26, 2003, effective December 27, 2003, 33 Pa.B. 6423.

**§ 113.4. Time and place for filing reconciliation and withholding statements.**

(a) An employer shall furnish a wage and tax withholding statement to each of his employees on or before January 31 following the year of payment of compensation, or within 30 days from the date of the last payment of compensation if employment or the business is terminated.

(1) An employer shall use the combined Federal-State Wage and Tip Withholding Statement (Form W-2) issued by the Internal Revenue Service or one that conforms thereto with the word "Commonwealth" printed, stamped or typed thereon. The statement must show the name of employer, address and identification number of the employer; the name, address and Social Security number of the employee; the total compensation paid during the taxable year; and the total amount of Pennsylvania tax withheld during the taxable year.

(2) The wage and tax withholding statements required in this chapter shall be in addition to a requirement of the Federal or a local government.

(b) Every employer who withholds tax under this chapter shall file with the Department an annual withholding reconciliation statement, on a form provided by the Department, along with a copy of all employee wage and tax withholding statements, by the following:

(1) A going business for tax withheld in the prior year, annually, by January 31.

(2) A terminated business within 30 days after the end of the month in which business or payment of compensation ceased.

(c) The annual withholding reconciliation statement and accompanying wage and tax withholding statements as required under subsection (b) shall be forwarded to the Department by electronic transmission as specified in instructions of the Department. If an employer is required to furnish nine or less wage and tax withholding statements under subsection (a), the employer may forward the annual withholding reconciliation statement and accompanying wage and tax withholding statements to the Department by first class mail.

(d) For purposes of this section, the term "electronic transmission" means the process of sending digital or analog data over a communication medium to one or more computing, network, communication or electronic devices.

**Authority**

The provisions of this 113.4 amended under section 354 of the Tax Reform Code of 1971 (72 P.S. § 7354).

**Source**

The provisions of this § 113.4 amended December 26, 2003, effective December 27, 2003, 33 Pa.B. 6423; amended November 16, 2018, effective November 17, 2018, 48 Pa.B. 7214. Immediately preceding text appears at serial pages (302156) and (333485).

**Cross References**

This section cited in 61 Pa. Code § 119.25 (relating to failing to furnish or furnishing a false withholding statement).

**§ 113.5. Payment of taxes and filing of deposit statements.**

(a) Every employer paying compensation shall, on a semimonthly, monthly, or quarterly basis, file a completed, signed, deposit statement on forms provided by the Department and forward a remittance in payment of the Commonwealth personal income tax required to be withheld.

(b) Remittance for the full amount of income tax withheld, plus interest, if applicable, made payable to the Pennsylvania Department of Revenue shall accompany the semimonthly, monthly, or quarterly deposit statement. Additional requirements shall be as follows:

(1) Employers are to use the preaddressed envelopes and preprinted forms furnished them for this purpose.

(2) If the packet of employer preprinted forms is lost or damaged, a request for duplicate forms, listing the name and identification number of the employer, should be sent to the Department.

(3) An employer required to file a deposit statement of tax withheld who has never received a preprinted form should use general forms provided for this purpose, which may be obtained from the Department of Revenue, Bureau of Accounts Settlement, License and Bonding Division, Post Office Box 8057, Harrisburg, Pennsylvania 17105.

(c) Remittances and deposit statements shall be forwarded in accordance with instructions issued by the Department. The place of deposit for each employer will be included with the information the Department forwards to all employers relating to payment of taxes and filing of deposit statements.

**Source**

The provisions of this § 113.5 amended June 1, 1984, effective June 2, 1984, 14 Pa.B. 1868. Immediately preceding text appears at serial page (36046).

**Cross References**

This section cited in 61 Pa. Code § 113.6 (relating to employer's filing dates and filing of deposit statements).

**§ 113.6. Employer's filing dates and filing of deposit statements.**

Determination of basis for filing shall be as follows:

(1) A semimonthly, monthly, or quarterly basis of filing shall be noted by an employer on his first deposit statement on forms provided for this purpose when he is required to begin withholding.

(2) If the aggregate amount withheld for each quarterly period can reasonably be expected to be \$1,000 or more, an employer shall pay the tax semimonthly with the accompanying deposit statement within three banking days



after the close of each semimonthly period. The semimonthly period ends on the 15th day and the last day of the month.

(3) If the aggregate amount withheld for each quarterly period is reasonably expected to be at least \$300 but less than \$1,000, an employer shall pay the tax monthly with the accompanying deposit statement on or before the 15th day of the month succeeding the months of January to November, inclusive, and on or before the last day of January following the month of December.

(4) If the aggregate amount withheld for each quarterly period is reasonably expected to be less than \$300, the employer shall remit quarterly payments with accompanying deposit statements on or before the last day of April, July, October, and January for the four quarters ending on the last day of March, June, September, and December.

(5) An employer who has temporarily ceased to pay compensation, including one engaged in seasonal activities, or whose withholding is zero, shall continue to file deposit statements on the same basis as he had been, but shall enter on the face of the deposit statement the word "None."

(6) An employer shall be permitted to change to a less frequent basis only at the beginning of a calendar year. Changes to a more frequent basis of filing shall be made at the beginning of any quarter that follows a quarter in which the \$300 or \$1,000 limits discussed in this section are exceeded. Notification of such changes shall be made by an employer in writing to the Department of Revenue, Bureau of Accounts Settlement, License and Bonding Division, P.O. Box 8057, Harrisburg, Pennsylvania 17105.

(7) The last deposit statement of tax withheld for any employer who discontinues his business or permanently ceases to pay compensation shall be marked "Final" on the face thereof, and shall be filed within 30 days after the end of the month in which business or payment of wages ceases, irrespective of the usual reporting period due date. This deposit statement and remittance shall be forwarded together with the Reconciliation Statement and Federal-State Wage and Tax Withholding Statements (form W-2) in accordance with instructions issued by the Department. The place of deposit for each employer will be included with the information under § 113.5 (relating to payment of taxes and filing of deposit statements).

#### Source

The provisions of this § 113.6 amended June 1, 1984, effective June 2, 1984, 14 Pa.B. 1868. Immediately preceding text appears at serial pages (36047) to (36048).

### § 113.7. Correcting mistakes.

An overpayment or underpayment of tax shall be corrected in the following manner:

(1) If the correct amount of tax is withheld, but because of an underpayment or an overpayment an incorrect amount is remitted to the Commonwealth, proper adjustment may be made within the same calendar year on the first return or later returns filed after the error is discovered. In the case of such an overpayment, the employer shall file an application for refund if the error is not corrected by the end of the year.



(2) If no tax or less than the correct amount of tax (other than on tips), is deducted from any compensation, the employer is authorized and required to deduct the amount of the undercollection from later payments to the employees. The employer shall remit the correct amount with his deposit statement and shall be liable for any underpayment, plus applicable interest or penalties. Reimbursement shall be a matter for settlement between the employer and the employee.

(3) If in any filing period more than the correct amount of tax is deducted from any wage payment, the employer is authorized to make an appropriate adjustment in his withholding for a subsequent period or periods in the same taxable year. If the over withholding is not offset by the last withholding period of the year, the employee shall report the amount actually withheld on his yearly income tax return.

**Source**

The provisions of this § 113.7 amended March 28, 2008, effective March 29, 2008, 37 Pa.B. 1476. Immediately preceding text appears at serial pages (302158) to (302159).

**§ 113.8. Records to be kept.**

(a) All employers are required to retain, preserve, and make available for examination and inspection by the Department, their Commonwealth withholding tax records. Such records shall include the following:

(1) The names, addresses, Social Security numbers, and occupations of employe receiving compensation.

(2) The amount and description where compensation is paid in any medium other than cash, and dates of all compensation payments.

(3) The periods of employment of employees.

(4) The periods for which the employes are paid while absent due to sickness or personal injuries and the amount and weekly rate of such payments.

(5) The identification number of the employer.

(6) Duplicate copies of returns filed and the dates and amounts of remittances made.

(b) For resident or nonresident employees performing services partly within and partly outside this Commonwealth, the employer shall maintain adequate current records which accurately show the amount of compensation from Commonwealth sources, if such employer has not withheld on all of the compensation paid to the employee.

**§ 113.9. Use of prescribed forms.**

(a) An employer shall not be excused from filing a return under this regulation by reason of the fact that no return form has been furnished to him. Copies of the prescribed return forms so far as possible will be regularly furnished employers by the Department, without application therefor. Employers not so supplied with the proper return forms should make application therefor to the Department in ample time to have the returns prepared, verified, and filed on or before the due date.

(b) If the prescribed form is not available, a statement by the employer disclosing the amount of taxes due together with remittance thereof, if filed within the prescribed time, may be accepted as a tentative return, so as to relieve the employer from liability for additions under Chapter 119 (relating to liabilities and

assessment—procedure and administration) if without unnecessary delay such tentative return is supplemented by a return made on the proper form.

**§ 113.10. Extensions of time.**

For good cause shown, upon written application by an employer, the Department may grant a reasonable extension of time for filing Return Form RIT-501 or Return Form RIT-W-3.

**§ 113.11. Special deposits and trust accounts.**

(a) If any employer fails to withhold or truthfully account for or remit the taxes withheld or fails to file deposit statements, the Department may serve notice requiring such employer to withhold and deposit such taxes in a bank designated by the Department, in a separate account in trust for and payable only to the Department.

(b) The employer shall deposit such taxes with the designated bank on the last day of each of the payroll periods of the employer as defined in § 113.3 (relating to computing withholding of Commonwealth personal income tax).

(c) The Department will notify the depository bank of the time or times the employer would have ordinarily made payments of withheld tax, and the bank shall forward on or about such times, to the Department, such funds as shall have been deposited by the employer. The amounts forwarded by the bank shall be credited against the tax liability of the employer. Nothing in this section shall excuse an employer from timely filing of all returns and statements nor from payment of any interest or penalties which may become due or assessed. Notice shall remain in full force and effect until notice of cancellation is served on the employer and the depository bank by the Department.

**§ 113.12. Liability of employer for withheld taxes.**

Every employer required to deduct and withhold tax from compensation of an employe shall be liable for the payment of such tax whether or not it is collected from the employee by the employer. For purposes of assessment and collection, any amount required to be withheld and remitted to the Department and additions to tax, penalties, and interest with respect thereto shall be considered the tax of the employer. If the employer fails to withhold taxes and thereafter the tax is paid, the tax which was required to be withheld shall not be collected from the employer. Such payment does not relieve the employer from liability for penalties, interest, or additions to the tax applicable with respect to such failure to withhold. Any amount of tax withheld shall constitute a special fund in trust for the Department, which shall be enforceable against the employer, his representative or any other person receiving any part of the fund.

**§ 113.13. Failure of employer to withhold.**

If an employer fails to deduct and withhold tax as prescribed in this chapter and thereafter the tax against which such tax may be credited is paid, the tax which was required to be deducted and withheld shall not be collected from the employer, but the employer shall not be relieved of the liability for any penalty, interest or additions to the tax imposed with respect to such failure to deduct and withhold.

**§ 113.14. Designation of third parties to perform acts required of employers.**

In case a fiduciary, agent or other person has the control, receipt, custody, disposal of or pays the compensation of an employe or a group of employees employed by one or more employers, the Department is authorized to designate such fiduciary, agent, or other person to perform such acts as are required of employers under this article. All provisions of this article which are applicable to an employer shall be applicable to a fiduciary, agent, or other person.

**§ 113.15. When withholding not required.**

Notwithstanding any provision of this article to the contrary, an employer on and after January 1, 1975, shall not be required to withhold any tax upon payment of wages to an employee if such employee can certify:

- (1) That he incurred no personal income tax liability for the preceding tax year; and
- (2) That he anticipates no liability for personal income tax for the current year.

**Source**

The provisions of this § 113.15 adopted June 12, 1975, 5 Pa.B. 1561.

**§ 113.16. Enforceable trust fund.**

(a) For purposes of assessment and collection of deducted tax and withheld tax that is not paid over to the Department, all taxes deducted and withheld from employees under this article or under color of this article shall constitute a trust fund for the Commonwealth and shall be enforceable against the employer, his representative, any person knowingly receiving a disbursement of any part of the fund, any person receiving a disbursement of any part of the fund without giving fair and valuable consideration therefore or any other person who is required to collect, account for and pay over the tax. The taxes will not be enforceable against a person receiving a disbursement from an employer if, before the negligent failure to truthfully account for and pay it over to the Commonwealth is discovered, the money is expended in payment of a genuine, uncontested and enforceable obligation, judgment, claim, lien or other liability of the person existing at the time the money was obtained or otherwise superior to the rights of the Commonwealth.

(b) Tax deducted from the State wages of an employee shall be considered to have been withheld at the time of payment of the State wages against which the deduction was charged.

(c) If an employer fails or refuses to pay over any withheld tax or to deposit it in a separate account in trust for and payable to the Department or otherwise identify and segregate it from other funds, it shall be deemed that:

- (1) Withheld tax would be on deposit in the general operating account of the employer at the time of payment of the State wages from which deduction was made.
- (2) The employer would disburse withheld tax last.

(3) Once withheld tax is disbursed, subsequent deposits would not replenish it.

(4) The lowest intermediate balance of cash on deposit in the general operating account is withheld tax that constitutes a trust fund for the Commonwealth that is enforceable against the employer or any person receiving any part of the fund.

(5) Any excess of the tax deducted over the lowest intermediate balance is withheld tax that has been received by the employer and disbursed.

**Authority**

The provisions of this § 113.16 issued under section 354 of the Tax Reform Code of 1971 (72 P. S. § 7354).

**Source**

The provisions of this § 113.16 adopted December 26, 2003, effective December 27, 2003, 33 Pa.B. 6423.

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