

October 29, 2021



Re: Request Letter Ruling – [REDACTED] – City Wage Tax – Requirement of the Employer Standard

Dear [REDACTED]:

This letter responds to your request for a Philadelphia Wage Tax ruling regarding the application of the City’s requirement of the employer standard to the wages paid to non-resident employees of [REDACTED] (the “Taxpayer”). This opinion is issued by the Tax Unit of the Law Department and the Technical Staff of the Revenue Department of the City of Philadelphia. You already have provided the required ruling fee.

Facts

This ruling is based upon the following facts as detailed in your letter, dated [REDACTED] to me.

Employer has multiple office locations in the City. Since March 2021, Employer’s offices have been closed and access by most of Employees has been restricted due to COVID-19. As a result, Employees have primarily worked remotely. In our new world, for business reasons, including the necessity to retain and find talented personnel and to minimize space needs, Employer will provide for remote working arrangements when its offices reopen. Employer is in the process of developing such remote work arrangements with Employees and its policies related to COVID-19 vaccines.

Rulings Requested

Your letter requested rulings on the following fact patterns below. The City’s response is in bold following each ruling request.

- 1. Employees are expected to return to the office under one of the scenarios described below. However, Employees who are not vaccinated or who refuse to say whether they are vaccinated are prohibited from entering the office.*

Compensation paid to an Employee who is prohibited from returning to the office is not subject to Wage Tax and Employer is not required to withhold Wage Tax from compensation paid to such an Employee.

The City agrees with ruling request #1. Consistent with the Philadelphia Department of Revenue’s “Requirement of the Employer” standard, there is no wage tax on the

compensation paid to an Employee who is prohibited from entering the Philadelphia office.

2. *Employer generally reopens its offices to Employees and permits supervisors to create remote work rules for their business units. The supervisor of a business unit tells his or her directly reporting Employees that they are expected to be in the office three days per week and are expected to work remotely two days per week. Employees may select which three days to work in the office and would be allowed to work from the office more than three days per week.*

Employer is required to withhold Wage Tax only from compensation paid for any days that Employees work in the Philadelphia office. This includes days on which an Employee is expected to work remotely, but works from the office.

As described in detail above, Employer and Employees can establish expectations regarding work locations. Because the Employer has business reasons for expecting Employees to work remotely, remote work performed in accordance with such expectations is performed for the convenience of the Employer, not the convenience of the Employee. Consequently, when an Employee is working remotely outside of the City consistent with such expectations, compensation for work performed outside of the City is not subject to Wage Tax and Employer is not required to withhold Wage Tax.

As also described above, there is no authority dictating that – for remote work to be performed for the convenience of the Employer – an Employee must otherwise be prohibited from entering the office. Although any compensation for services performed in the office would be subject to Wage Tax, an Employee who is working remotely consistent with Employer’s clearly-stated expectations is doing so for Employer’s convenience, even if he/she technically could decide to work in the office.

The City disagrees with ruling request #2. Consistent with the Philadelphia Department of Revenue’s “Requirement of the Employer” standard, the wages of non-resident employees who are “expected” but not required to work remotely are subject to the wage tax because they have the option to work in the office located in Philadelphia. Furthermore, the employer’s “business reason” of providing work from home options to attract talented personnel is insufficient because the employer’s decision to implement the work from home policy is to ultimately accommodate the employees’ desire to work from home. However, if the employer’s “business reason” stems from cost-saving methods through the reduction of office space, the City is inclined to recognize it as legitimate business reason, provided that the employer provides support.

3. *The same facts as Scenario 2 above, except that the policy provides Employees of the business unit are required to work remotely at least two days per week.*

Employer is required to withhold Wage Tax only from compensation paid for any days that Employees work in the Philadelphia office. This includes days on which an Employee expected

to work remotely, but works from the office.

As described in detail above, Employer and Employees can establish expectations regarding work locations. Because the Employer has business reasons for expecting Employees to work remotely, remote work performed in accordance with such expectations is performed for the convenience of the Employer, not the convenience of the Employee. Consequently, when an Employee is working remotely outside of the City consistent with such expectations, compensation for work performed outside of the City is not subject to Wage Tax and Employer is not required to withhold Wage Tax.

The City agrees with ruling request #3, in part. Consistent with the Philadelphia Department of Revenue’s “Requirement of the Employer” standard, the wages of non-resident employees who are required to work remotely are not subject to the Wage Tax for the two days they are required to work outside of Philadelphia, provided that the employees are also not given the option to work in the Philadelphia office as needed to perform their duties.

4. Employer generally reopens its offices to Employees and permits supervisors to create remote work rules for their business units. The supervisor of a business unit tells his or her directly reporting Employees that they are expected to be in the office on Tuesday, Wednesday and Thursday and are expected to work remotely on Monday and Friday. Employees would be allowed to work from the office on Monday and Friday.

Employer is required to withhold Wage Tax only from compensation paid for any days that Employees work in the Philadelphia office. This includes days on which an Employee is expected to work remotely, but works from the office.

As described in detail above, Employer and Employees can establish expectations regarding work locations. Because the Employer has business reasons for expecting Employees to work remotely, remote work performed in accordance with such expectations is performed for the convenience of the Employer, not the convenience of the Employee. Consequently, when an Employee is working remotely outside of the City consistent with such expectations, compensation for work performed outside of the City is not subject to Wage Tax and Employer is not required to withhold Wage Tax.

As also described above, there is no authority dictating that – for remote work to be performed for the convenience of the Employer – an Employee must otherwise be prohibited from entering the office. Although any compensation for services performed in the office would be subject to Wage Tax, an Employee who is working remotely consistent with Employer’s clearly-stated expectations is doing so for Employer’s convenience, even if he/she technically could decide to work in the office.

The City disagrees with ruling request #4. Consistent with the Philadelphia Department of Revenue’s “Requirement of the Employer” standard, the wages of non-resident employees who are “expected”, but not required, to work remotely are subject to the Wage Tax

because the non-resident employees are allowed to work in the office located in Philadelphia on Monday and Friday. Furthermore, the employer’s “business reason” of providing work from home options to attract talented personnel is insufficient because, the employer’s decision to implement the work from home policy is to ultimately accommodate the employees’ desire to work from home. However, if the employer’s “business reason” stems from cost-saving methods through the reduction of office space, the City is inclined to recognize it as legitimate business reason, provided that the employer provides support.

5. The same facts and Scenario 4 above, except that the policy provides Employees of the business unit are required to work remotely on Monday and Friday.

Employer is required to withhold Wage Tax only from compensation paid for any days that Employees work in the Philadelphia office. This includes days on which an Employee is expected to work remotely, but works from the office.

As described in detail above, Employer and Employees can establish expectations regarding work locations. Because the Employer has business reasons for expecting Employees to work remotely, remote work performed in accordance with such expectations is performed for the convenience of the Employer, not the convenience of the Employee. Consequently, when an Employee is working remotely outside of the City consistent with such expectations, compensation for work performed outside of the City is not subject to Wage Tax and Employer is not required to withhold Wage Tax.

The City agrees with ruling request #5, in part. Consistent with the Philadelphia Department of Revenue’s “Requirement of the Employer” standard, the wages of non-resident employees who are required to work remotely are not subject to the Wage Tax for the time they are working outside of Philadelphia on Monday and Friday, provided that the employees are also not given the option to work in the Philadelphia office as needed to perform their duties.

6. Employer does not have a company-wide reopening policy but instead requires each business unit establish its own policy regarding remote work. The supervisor of a business unit tells his or her directly reporting Employees that they are expected to be in the office on Tuesday, Wednesday and Thursday and are expected to work remotely on Monday and Friday. Employees would be allowed to work from the office on Monday and Friday.

Employer is required to withhold Wage Tax only from compensation paid for any days that Employees work in the Philadelphia office. This includes days on which an Employee is expected to work remotely, but works from the office.

As described in detail above, Employer and its Employees can establish expectations regarding work locations. Because the Employer has business reasons for expecting Employees to work remotely, remote work performed in accordance with such expectations is performed for the convenience of the Employer, not the convenience of the Employee. Consequently, when an

Employee is working remotely outside of the City consistent with such expectations, compensation for work performed outside of the City is not subject to Wage Tax and Employer is not required to withhold Wage Tax.

As also described above, there is no authority dictating that – for remote work to be performed for the convenience of the Employer – an Employee must otherwise be prohibited from entering the office. Although any compensation for services performed in the office would be subject to Wage Tax, an Employee who is working remotely consistent with Employer’s clearly-stated expectations is doing so for Employer’s convenience, even if he/she technically could decide to work in the office.

The City disagrees with ruling request #6. Consistent with the Philadelphia Department of Revenue’s “Requirement of the Employer” standard, the wages of non-resident employees who are “expected”, but not required, to work remotely are subject to the Wage Tax because the non-resident employees are allowed to work in the office located in Philadelphia on Monday and Friday. Furthermore, the employer’s “business reason” of providing work from home options to attract talented personnel is insufficient because, the employer’s decision to implement the work from home policy is to ultimately accommodate the employees’ desire to work from home. However, if the employer’s “business reason” stems from cost-saving methods through the reduction of office space, the City is inclined to recognize it as legitimate business reason, provided that the employer provides support.

7. *The same facts and Scenario 6 above, except that the policy provides Employees of the business unit are required to work remotely on Monday and Friday.*

Employer is required to withhold Wage Tax only from compensation paid for any days that Employees work in the Philadelphia office. This includes days on which an Employee is expected to work remotely, but works from the office.

As described in detail above, Employer and its Employees can establish expectations regarding work locations. Because the Employer has business reasons for expecting Employees to work remotely, remote work performed in accordance with such expectations is performed for the convenience of the Employer, not the convenience of the Employee. Consequently, when an Employee is working remotely outside of the City consistent with such expectations, compensation for work performed outside of the City is not subject to Wage Tax and Employer is not required to withhold Wage Tax.

The City agrees with ruling request #7, in part. Consistent with the Philadelphia Department of Revenue’s “Requirement of the Employer” standard, the wages of non-resident employees who are required to work remotely are not subject to the Wage Tax for the time they are working remotely outside of Philadelphia on Monday and Friday, provided that the employees are also not given the option to work in the Philadelphia office as needed to perform their duties.

This ruling was prepared based upon the facts presented and can only be relied upon by Taxpayer. This private letter ruling will remain in effect as long as the fact pattern remains unchanged, until a change in the law and/or the Philadelphia Wage Tax Regulations dictate a different treatment or until the Revenue Commissioner informs Taxpayer in writing that this private letter ruling is no longer applicable.

Kind regards;

Frances Ruml Beckley

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