



(Bill No. 1437)

AN ORDINANCE

Explanation: *Italics* indicate new matter added.

Amending Title 19 of The Philadelphia Code, entitled "Finances, Taxes and Collections," by adding a new Chapter 19-2800, entitled "Pennsylvania Intergovernmental Cooperation Authority Tax on Wages and Net Profits," by imposing a tax of one and one-half percent on the salaries, wages, commissions and other compensation earned by residents of the City and on the net profits earned in businesses, professions or other activities conducted by residents of the City; providing that revenues from the tax are to be used for the purposes of the Pennsylvania Intergovernmental Cooperation Authority; pledging to obligees of the Authority that the City will neither repeal nor reduce the tax for so long as bonds of the Authority secured by the pledge of the tax remain outstanding; providing for the collection of the tax; and imposing penalties.

The Council of the City of Philadelphia hereby ordains:

SECTION 1. Title 19 of The Philadelphia Code, entitled "Finances, Taxes and Collections," is hereby amended by adding a new Chapter 19-2800, entitled "Pennsylvania Intergovernmental Cooperation Authority Tax on Wages and Net Profits," to read as follows:

CHAPTER 19-2800. PENNSYLVANIA
INTERGOVERNMENTAL
COOPERATION AUTHORITY TAX
ON WAGES AND NET PROFITS.

§19-2801. Legislative Acknowledgements.

(1) *The General Assembly of the Commonwealth of Pennsylvania has enacted the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class (Act of _____, 1991, P.L. ____, No. ____).*

(2) *The Act declares it to be the public policy of the Commonwealth to exercise its retained sovereign powers with regard to taxation, debt issuance and matters of State-wide concern in a manner calculated to foster the fiscal integrity of cities of the first class to assure that these cities provide for the health, safety and welfare of their citizens; pay principal and interest owed on their debt*

obligations when due; meet financial obligations to their employees, vendors and suppliers; and provide for proper financial planning procedures and budgeting practices. The inability of a city of the first class to provide essential services to its citizens as a result of a fiscal emergency has been determined to affect adversely the health, safety and welfare not only of the citizens of that municipality but also of other citizens in this Commonwealth.

(3) The stated intent of the General Assembly for enacting the Act is to:

(a) provide cities of the first class with the legal tools with which cities of the first class can eliminate deficits that render them unable to perform essential municipal services;

(b) create an authority that will enable cities of the first class to access capital markets for deficit elimination and seasonal borrowings to avoid default on existing obligations and chronic cash shortages that will disrupt the delivery of municipal services;

(c) foster sound financial planning and budgetary practices that will address the underlying problems which result in such deficits; and

(d) exercise its powers consistent with the rights of citizens to home rule and self government by maintaining a system pursuant to which the principal responsibility for conducting the governmental affairs of a municipality remains with its local elected officials;

(e) remedy the fiscal emergency confronting cities of the first class through the implementation of sovereign powers of the Commonwealth with respect to taxation, indebtedness and matters of State-wide concern. To safeguard the rights of the citizens to the electoral process and home rule, the General Assembly intends to exercise its power in a cooperative manner with the elected officers of cities of the first class as contemplated by the Constitution of Pennsylvania.

(f) authorize the imposition of a tax or taxes to provide a source of funding for an intergovernmental cooperation authority to enable it to assist cities of the first class and to incur debt of such authority for such purposes; however, the General Assembly intends that such debt shall not be

a debt or liability of the Commonwealth or a city of the first class nor shall debt of the authority payable from and secured by such source of funding create a charge directly or indirectly against revenues of the Commonwealth or a city of the first class.

(4) In enacting the Act the General Assembly of the Commonwealth inter alia found:

(a) That cities of the first class have encountered recurring financial difficulties which may affect the performance of necessary municipal services to the detriment of the health, safety and general welfare of residents of such cities.

(b) That the financial difficulties have caused cities of the first class to lose an investment-grade credit rating and direct access to capital markets.

(c) That it is critically important that cities of the first class achieve an investment-grade credit rating and thereafter maintain their credit-worthiness.

(d) *That, without the ability to enter the capital markets, cities of the first class may face a fiscal emergency that could render them unable to pay their obligations when due and deliver essential services to their citizens.*

(e) *That, due to the economic and social interrelationship among all citizens in our economy, the fiscal integrity of cities of the first class is a matter of concern to residents of the entire Commonwealth, and the financial problems of such cities have a direct and negative effect on the entire Commonwealth.*

(f) *That, because cities of the first class consume a substantial proportion of the products of Pennsylvania's farms, factories, manufacturing plants and service enterprises, economic difficulties confronting cities of the first class detrimentally affect the economy of the Commonwealth as a whole and become a matter of State-wide concern.*

(g) *That, because residents of cities of the first class contribute a substantial proportion of all Commonwealth tax revenues, a disruption of the economic and social life of such cities may have a significant detrimental effect upon Commonwealth revenues.*

(h) That, cities of the first class and the Commonwealth have shown a willingness to cooperate in order to address important financial and budgetary concerns.

(i) That, the financial difficulties of cities of the first class can best be addressed and resolved by cooperation between governmental entities.

(j) That, the Constitution of Pennsylvania grants municipalities authority to cooperate with other governmental entities in the exercise of any function or responsibility.

(k) That, the Commonwealth retains certain sovereign powers with respect to cities of the first class, among them the powers to authorize and levy taxes, to authorize the incurring of indebtedness and to provide financial assistance that may be necessary to assist cities in solving their financial problems.

(l) That, the Commonwealth may attach conditions to grants of authority to incur indebtedness or assistance to

cities of the first class in order to ensure that deficits are eliminated and access to capital markets is achieved and maintained.

(m) That, such conditions shall be incorporated into intergovernmental cooperation agreements between the Commonwealth or its instrumentalities and cities of the first class.

(n) That, cities of the first class and the Commonwealth will benefit from the creation of an independent authority composed of members experienced in finance and management which may advise such cities, the General Assembly and the Governor concerning solutions to fiscal problems cities of the first class may face.

(o) That, the creation of such an authority with the power to borrow money and issue bonds in order to assist cities of the first class will allow such cities to continue to provide the necessary municipal services for their residents and to contribute to the economy of the Commonwealth.

(p) That, in order for an authority to effectively assist cities of the first class in financing their cash flow needs and for cities of the first class to be able to cost-effectively

finance their cash flow needs during the term of any authority bonds and thereafter, the enactment of certain provisions of law in connection with the issuance of tax and revenue anticipation notes of cities of the first class is necessary and desirable.

(q) That, a dedicated source of funding for the authority is necessary in order to address the immediate financial difficulties of cities of the first class.

(r) That, the Commonwealth's action in authorizing cities of the first class to impose taxes for the authority will allow such cities to continue to provide necessary services for their residents and for those non-residents enjoying the benefits of such services.

(s) That, the levy of a tax within cities of the first class for the authority should be authorized by the Commonwealth for the benefit of cities of the first class, with the revenue produced as a result of such levy being Commonwealth-authorized revenues and revenues of a State authority, and not revenues of the city of the first class.

(t) *That, the authority to levy a tax only within cities of the first class or as a rate that is higher than that imposed outside cities of the first class is based upon a legitimate classification which the General Assembly deems to be reasonable and just, since the benefit received by taxpayers in cities of the first class as a result of such levy is determined to be in proportion to the tax burden imposed in such cities of the first class.*

(u) *That, a levy imposed only, or at a higher rate, in cities of the first class will be used to benefit citizens of cities of the first class by providing for their health, safety, convenience and welfare.*

(5) *City Council further acknowledges that the Act:*

(a) *Specifically authorizes the imposition and pledge of any combination of the following taxes:*

(i) *a sale and use and hotel occupancy tax;*

(ii) *a realty transfer tax such as is now or as may be hereafter enacted for general revenue purposes of the City pursuant to Section 1301(b) of the Act of December 13, 1988 (P.L. 1121, No. 45), known as the Local Tax Reform Act; and*

(iii) a tax on salaries, wages, commissions, compensation or other income received or to be received for work done by residents of the City, imposed pursuant to the provisions of the Sterling Act.

(b) Provides that the revenues generated by any such tax are to become the exclusive property of the Pennsylvania Intergovernmental Cooperation Authority (PICA) and shall not be subject to appropriation by City Council or the General Assembly of the Commonwealth.

(c) Provides that the Department of Revenue of the Commonwealth is charged with the administration, enforcement and collection of the tax imposed by this Chapter and if the tax imposed is pursuant to Subsections 601(a)(2) or (3) of the Act the administration, enforcement and collection procedures for the taxes and the fines, forfeitures, penalties and interest charges shall be as are specified in this Chapter.

(d) Provides that the Department of Revenue of the Commonwealth is authorized to appoint as its agents, tax officers, clerks, collectors and other assistants, including revenue and legal departments of cities imposing a tax under this chapter, to collect and enforce any tax, including

interest and penalties, imposed under authority of this chapter; provided, however, that any moneys collected by any such agent shall not be commingled with any other funds of such agent and must be segregated and paid over to the Department of Revenue of the Commonwealth at least monthly.

(e) Provides that the revenues collected by any of the Department of Revenue's agents, tax officers, clerks, collectors and other assistants are to be paid over to the Department of Revenue of the Commonwealth to be deposited by the Treasurer of the Commonwealth in the Pennsylvania Intergovernmental Cooperation Authority Tax Fund.

(f) Provides that the obligees of PICA shall have the right to enforce a pledge of or security interest in revenues of the authority securing payment of bonds of the authority against all government agencies in possession of any such revenues at any time, which revenues may be collected directly from such officials upon notice by such obligees or a trustee for such obligees for application to the payment of such bonds as and when due or for deposits in any sinking, bond or debt service fund established by the

Commonwealth or established by resolution of the authority with such trustee at the times and in the amounts specified in such bonds or the resolution or indenture or trust agreement securing such bonds. Any government agency in possession of any such revenues shall make payment against receipt and shall thereby be discharged from any further liability or responsibility for such revenues. If such payment shall be to a holder of bonds, it shall be made against surrender of such bonds to the payor for delivery to the authority in the case of payment in full, otherwise it shall be made against production of such bonds for notation thereon of the amount of the payment. The provisions of this section with respect to the enforceability and collection of revenues which secure bonds shall supersede any contrary or inconsistent statutory provision or rule of law. This section shall be construed and applied to fulfill the legislative purpose of clarifying and facilitating the financing of the authority of the costs of assisting a city by assuring to the obligees of the authority the full and immediate benefit of the security for

the bonds without delay, diminution or interference based on any statute, decision, ordinance, or administrative rule or practice.

§19-2802. Definitions.

(1) "Authority." The Pennsylvania Intergovernmental Cooperation Authority established in the Act.

(2) "Bond." A note, bond, refunding note and bond, interim certificate, debenture and other evidence of indebtedness or obligation which an authority is authorized to issue pursuant to the Act.

(3) "Business." An enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, copartnership, association, governmental body or unit or agency, or any other entity.

(4) "Department." The Department of Revenue of the Commonwealth or its agents, tax officers, clerks, collectors and other assistants, including revenue and legal departments of the City of Philadelphia. For purpose of complying with the provisions of this Chapter, the Revenue

Department of the City is the authorized agent of the Department of Revenue of the Commonwealth for the collection of taxes imposed hereunder.

(5) "Employee." Any person who renders services to another for a consideration or its equivalent, under an express or implied contract, and who is under the control and direction of the latter, including temporary, provisional, casual or part-time employment.

(6) "Employer." An individual, copartnership, association, corporation, governmental body or unit or agency, or any other entity, who or that employs one or more persons on a salary, wage, commission or other compensation basis.

(7) "Net Profits." The net gain from the operation of a business, profession or enterprise, after provision for all allowable costs and expenses incurred in the conduct thereof, either paid or accrued in accordance with the accounting system used, without deduction of taxes based on income.

(8) "Obligee of the Authority." Any holder or owner of any bond of the Pennsylvania Intergovernmental

Cooperation Authority or any trustee or other fiduciary for any such holder or any provider of a letter of credit, policy of municipal bond insurance or other credit enhancement or liquidity facility for bonds of the authority.

(9) *"Person."* Every individual, copartnership, fiduciary or association.

(10) *"Resident."* An individual, copartnership, association, corporation or any other entity domiciled in the City.

(11) *"Salaries, Wages, Commissions and Other Compensation."* All salaries, wages, commissions, bonuses, incentive payments, fees and tips that may accrue or be received by an individual, whether indirectly or through an agent and whether in cash or in property, for services rendered, but excluding:

(a) *periodical payments for sick or disability benefits and those commonly recognized as old age benefits;*

(b) *retirement pay, or pensions paid to persons retired from service after reaching a specific age or after a stated period of employment;*

(c) *any wages or commissions paid by the United States to any person for active service in the Army, Navy or Air Force of the United States;*

(d) *any bonus or additional compensation paid by the United States, this Commonwealth, or any other state for such service;*

(e) *any statutory per diem compensation paid any witness or juror, or member of the District Election Board.*

(12) *"Taxpayer." Any person required by this Chapter to file a return or to pay a tax.*

§19-2803. Imposition of Pennsylvania Intergovernmental Cooperation Authority Tax on Wages and Net Profits.

(1) *An annual tax to provide revenues for the purposes of the Pennsylvania Intergovernmental Cooperation Authority is imposed as follows:*

(a) *On salaries, wages, commissions, and other compensation earned by residents of Philadelphia on and after July 1, 1991 at the rate of one and one-half percent.*

(b) On the net profits earned in business, professions or other activities conducted by residents after July 1, 1991 at the rate of one and one-half percent.

(2) The tax imposed under §19-2803(1)(a) shall relate to and be imposed upon salaries, wages, commissions, and other compensation paid by an employer or on his behalf to any person who is employed by or renders services to him.

(3) The tax levied under §19-2803(1)(b) shall relate to and be imposed on the net profits of any business, profession, or enterprise carried on by any person as owner or proprietor, either individually or in association with some other person or persons.

§19-2804. City Pledge; Duration of Taxes.

(1) The city pledges and agrees with each and every obligee of the authority acquiring bonds secured by an authority pledge of taxes imposed by this Chapter that the city will not repeal the tax or reduce the rate of the tax imposed for the authority until all bonds so secured by the pledge of the authority, together with the interest thereon, are fully paid or provided for. The revenues from the taxes imposed by this Chapter shall be revenues and property of

the authority and shall not be revenues or property of the city. The taxes shall be collected by the Department of Revenue of the Commonwealth and shall not be subject to appropriation by the City Council or by the General Assembly.

(2) The taxes imposed under this chapter shall continue in effect until all bonds of the authority which are secured by the authority's pledge of such tax revenues are no longer outstanding. For as long as any such bonds remain outstanding, City Council pledges not to repeal this Chapter or reduce the rate of tax imposed for the authority under this Chapter.

§19-2805. Return and Payment of Tax.

(1) Each person whose net profits are subject to the tax imposed by this chapter shall, on or before April 15 of each year, make and file with the Department a return on a form furnished by or obtainable from the Department setting forth the amount of such net profits earned by him during the preceding year and subject to the said tax, together with such other pertinent information as the Department may require. Where a return is made for a fiscal year or for any

other period different from a calendar year, the said return shall be made within one hundred five (105) days from the end of the said fiscal year or other period.

(2) Each person who is employed on a salaried, wage, commission or other compensation basis, which is subject to a tax imposed by this Chapter and which tax is not withheld by his employer and paid to the Department as provided in §19-2806 shall make and file a tax return with the Department for the three (3) months ending December 31, on or before the 15th day of the following February, and shall make and file a tax return with the city on or before the last day of April, July and October for the last three (3) months ending on the last day of the month preceding the due date. The return shall be made on a form furnished by the Department, setting forth the aggregate amount of salaries, wages, commissions and other compensation subject to the said tax earned by such person for the three (3) months, together with such other pertinent information as the city may require.

(3) Whenever any person files a return required by this Section he shall at the time of filing pay to the Department the amount of tax due thereon.

§19-2806. Collection at Source.

(1) Each employer within a city of the first class who employs one or more persons on a salary, wage, commission or other compensation basis shall deduct at the time of payment thereof, the tax imposed by this Chapter on the salaries, wages, commissions and other compensation due from the said employer to the said employee, except that due to employees engaged as domestic servants, and shall make a return and pay to the Department the amount of tax so deducted at such intervals as the Department shall established by regulations.

(a) The return shall be on a form or forms furnished by the Department and shall set forth the names and residences of each employee of said employer during all or any part of the period covered by the said return, the amounts of salaries, wages, commissions or other compensation earned during such period by each of such employees, together with such other information as the Department may require.

(b) The employer making the return shall, at the time of filing, pay to the Department the amount of tax due thereon.

(c) The failure of any employer, residing either within or outside of a city of the first class to make such return and/or to pay such tax shall not relieve the employee from the responsibility for making the returns, paying the tax, and complying with the regulations with respect to making the returns and paying the tax.

(2) When an employer makes deductions or returns under §19-2806(1) he shall deposit such deduction with the Department or with any bank designated by the Department, which shall in all cases be a bank designated as a City depository bank.

(a) Each bank so designated shall issue official receipts to the employer for the money received from him, which money shall be credited to the authority's account. Such deposits shall be reported daily to the department.

(b) At the time of each deposit, the employer shall file with the department or designated bank a depository form to be furnished by the department which shall contain such information as the department may require.

§19-2807. Estimated Net Profits Tax.

(1) Returns and Payments of Estimated Tax.

(a) *Each person whose net profits are subject to the tax imposed by this Chapter shall be required to file returns and pay estimated tax on account of the net profits due for the current taxable year.*

(2) *For the purposes of this Chapter, the term "estimated tax" means the amount of net profits tax which a person calculated to be his tax due under this Chapter for the preceding taxable year, after giving effect to the tax credit provided in Section 19-2808.*

(3) *Calendar Year Taxpayers.*

(a) *Returns and payments of estimated tax for taxable years beginning after December 31, 1991 shall be due and payable as follows:*

(.1) *The first installment of one-fourth of the estimated tax shall be due and payable on or before April 15 of the taxable year.*

(.2) *The second installment of one-fourth of the estimated tax shall be due and payable on or before June 15 of the taxable year.*

(4) *Fiscal Year Taxpayers.*

(a) *Persons who report net income for a fiscal year period other than a calendar year shall make returns and payments of estimated tax for taxable years beginning after December 31, 1991 as follows:*

(.1) *The first installment of one-fourth of the estimated tax shall be due and payable within three and one-half months after the beginning of the taxable fiscal year.*

(.2) *The second installment of one-fourth of the estimated tax shall be due and payable within five and one-half months after the beginning of the taxable fiscal year.*

(5) *Credits for Excessive Estimated Payments.*

(a) *Any estimated payments which exceed a person's tax liability for the taxable year shall be applied as a credit against the estimated tax for the following taxable year, to the extent of the estimated tax due for the following taxable year.*

(b) *The amount of any estimated payments which exceed the estimated tax for the following year shall be refunded to the taxpayer.*

(6) Provisions not Applicable. The provisions of Section 19-2807 shall not be applicable to a person for a taxable year if:

(a) Such person was not engaged in business in the preceding taxable year; or

(b) Such person's net profits tax liability for the preceding taxable year does not exceed one hundred (\$100) dollars; or

(c) Such person terminated his business activity prior to the due date of the net profits tax return for the preceding taxable year.

(7) Any person who terminates his business activity prior to the due date of any estimated payment shall not be required to make any additional estimated payments for that taxable year.

§19-2808. Credit Against Tax.

(1) In the event that any person subject to a tax under §19-1502(1)(c) and who is entitled to a credit pursuant to §19-1506 does not totally exhaust such credit against tax

liability incurred pursuant to §19-1502(1)(c). The remaining credit may be applied against taxes owed pursuant to this chapter.

(2) The credit provided pursuant to this Section relates to the following tax year;

(a) When a return is made for a fiscal year corresponding to the calendar year, the same calendar year as that which is used as the measuring period for computing net income subject to the tax imposed under Chapter 19-2600 of this Title on which the credit is based.

(b) When a return is made for a fiscal year other than a calendar year, the fiscal year which ends within the calendar year for which the tax imposed under Chapter 19-2600 of this Title is paid, and on which the credit is based.

(3) Nothing in this Section shall permit credits to be charged against any given tax year in excess of the amount of tax due under §19-2803 for that tax year.

§19-2809. Penalties and Enforcement.

(1) Penalties.

(a) *For late deposits of withheld taxes due under this Chapter there shall be added, in addition to the penalties set forth herein, a penalty of ten percent (10%) of the underpayment.*

(2) *Extension for Payment.*

(a) *If the due date for the payment of any tax due falls on a Sunday or a holiday, or any day during which the agency collecting such tax is not open for a full business day, the Department may postpone such due date to the next following business day.*

(b) *The Department may, upon proper cause shown, grant a taxpayer an extension of not more than sixty (60) days for the payment of the tax. Application for such extension shall be made on or before the last day for the payment of the tax, in such form as the Department prescribes.*

(c) *If any Federal taxing authority grants to any taxpayer an extension for the payment of Federal income tax for a period in excess of sixty (60) days, the Department*

may grant an additional extension of time for the payment of any City tax affected thereby, not to exceed thirty (30) days after the termination of the Federal extension period.

(d) Where an extension for payment of any tax has been granted by the Department, the principal amount of such tax shall be subject to interest from the original due date at the rate of one-half of one percent per month, or part thereof, but shall not be subject to any penalty if paid within the extended period.

(3) Extension for Filing Returns.

(a) The Department may, upon proper cause shown, grant a taxpayer an extension of not more than sixty (60) days for the filing of any tax return. Application for such extension shall be made on or before the last day of the payment of the tax, in such form as the Department prescribes.

(b) If any Federal taxing authority grants to any taxpayer an extension for the filing of Federal income tax returns for a period in excess of sixty (60) days, the

Department may grant an additional extension of time for the filing of any tax returns affected thereby, not to exceed the date of termination of the Federal extension period.

(c) In order for an extension to be granted, the taxpayer must file a tentative return and pay one hundred percent (100%) of the tax estimated to be due, on or before the statutory due date. The extension will not relieve the taxpayer from the obligation to pay interest and penalty from the date such return was originally due upon the amount of tax due in excess of the estimated tax paid.

(4) Allocation of Delinquent Payments.

(a) Unless otherwise provided, when a partial payment is made on account of any delinquent tax, such payment shall be pro-rated between the principal sum of such tax and the penalties and interest accumulated on it.

(5) Records of Taxpayer.

(a) Every person who has paid, or from whom there is due or alleged to be due, any moneys collectible by the Department, for or on behalf of the authority, including

any taxes, charges, or other sums, and any person upon whom there is imposed any other obligation to collect and remit to a city any such moneys shall:

(.1) preserve and retain his books, records, accounts, copies of tax returns filed with other taxing authorities, and other data relating thereto, for a period of six (6) years after such moneys become collectible or have been collected by the Department, whichever is later;

(.2) when requested by the Department produce his books, records, accounts, copies of tax returns filed with other taxing authorities, and other data relating thereto, and give to the Department the opportunity to make examination of such books, records, accounts, copies, data, and any property owned or controlled by such person in order to verify the accuracy of any report or return made, or if no report or return has been made, to ascertain the amount of tax, rent, charge, or other sum due.

(.3) Any information obtained by the Department in the conduct of any examination or investigation shall be treated as confidential, except in the course of departmental business, or in accordance with judicial order, or as otherwise provided by law.

(6) Oaths.

(a) Whenever the Department shall hold hearings or conduct investigations, the Revenue Commissioner of the City, or any deputy designated by him, shall have the power to administer oaths to persons under examination.

(7) Interest, Penalties and Costs.

(a) If any tax authorized or imposed under this Chapter is not paid when due, there shall be added to the amount of the unpaid tax and collected therewith, interest at the rate of one-half of one percent of the amount of the unpaid tax, and a penalty at the rate of one percent of the amount of the unpaid tax shall be added for each month or fraction thereof during which said tax shall remain unpaid and shall be collected, together with the amount of the tax. This provision shall not apply to:

(.1) Taxes imposed by §19-2803 that are not, in fact, withheld pursuant to §19-2806; provided, however, when such tax is not paid when due interest at the rate of one-half percent of the amount of the unpaid tax and a penalty of one percent of the amount of the unpaid tax per month for

