

Earned Income Tax Refunds for Non-resident Employees Guidance and Frequently Asked Questions (Update February 1, 2022)

The City of Wilmington has published clarifying information for customers who are requesting refunds of earned income taxes (wage taxes) withheld during the calendar year 2021. This information, including forms, may be found at www.WilmingtonDE.gov/residents/earned-income-tax-and-net-profits-tax.

We are providing guidance and a list of frequently asked questions and examples of the types of situations in which customers would be eligible for refunds.

The City restricts refunds to the non-resident employee wage taxpayer:

- a) Who is able to prove days of work they performed or rendered work outside of the City limits of Wilmington.
- b) When and to the degree an employer certifies and, upon demand, supplies evidence to the satisfaction of the Director of Finance, that the employer has required that the work be performed or rendered by the non-resident employee at a location outside of the City as condition of employment and/or because of an absolute prohibition established by an applicable emergency order.

The City observes that the COVID-19 pandemic (as other emergencies) is a temporary period for remote workplace activity if required by federal, state, and local authorities. As states of emergency are lifted or loosened (as has been the case in Wilmington), the employer and the employee usually will have the option of working remotely at their discretion. If an employer requires employees to work remotely, we are requiring that the employer certify this requirement and, if called upon, provide sufficient evidence to the Director of Finance, in order for the non-resident employee to be eligible for a refund. If an employee is not absolutely prohibited from working at a City work location but may opt to either work at home or at another location outside of the City, then the remote work performed outside of the City will **not be eligible** for a refund.

What if my business closed due to restrictions imposed by the State for social distancing?

If an employer is required by the federal, state, or local authorities to reduce their hours or close their business, but the business continues to pay the employees and thereby withhold wage taxes, those employees not working **would be eligible** for refunds. If the business reopens with reduced hours and limited staff, those employees who are not working but still employed **may be eligible** to a refund. For example, if a restaurant is on restricted hours with limited seating and requiring limited staff, furloughed staff **would be eligible** for refunds.

What if the employer allows an employee to elect to work remotely?

If an employee requests to work remotely **by choice** but is rendering services to the employer, then they would **not be eligible** for a refund. By example, if, outside the period of the Phase I State of Emergency, an employer who allows their employees to work remotely and the employee elects to do so, and they are performing or rendering work for the company, they would **not be eligible** for a refund.

What if I need to work remotely due to childcare or care for a family member?

If an employee is required to be home due to childcare, this is considered to be at the request of the employee. Therefore, they are **not eligible** to a wage tax refund.

What if I work outside the City for business outside of the City?

If an employee works remotely for business not related to business within the City limits, then the employee may apportion time on this business and **may be eligible** for a refund. For example, an attorney working for a firm located in the City but is traveling to clients outside of the City or state may request that their time be apportioned for the hours worked outside of the City and receive a refund for this time. The employer must certify that these hours are for work rendered outside of the City.

Can employers submit bulk refunds on behalf of employees?

No. Refunds are the responsibility of the individual taxpayer and must be submitted as such. Employers must also certify, and when called upon by the Director of Finance, provide evidence that the employee worked remotely due to the State of Emergency or due to requirements of the employer.

What does a certification mean?

Employers must provide an affirmative and truthful statement of the facts required to establish that employees who request a refund is entitled to it under the law.

Starting for Tax Year 2021, employers can certify the percentage of time for an employee who worked outside the City, so long as the employee still provides documentation on the time worked. This may speed up the refund process.

Can employees and employers use electronic signatures for their applications and letters?

Yes, we will accept electronic signatures from individual employees and employer representatives on the appropriate forms and accompanying letters from employers so long as signatures are not replicated in bulk form. Employers are encouraged to keep on record verified electronic signatures, through a date stamp or some other means, in the event the refund request is subject to review or audit by the City of Wilmington.

What if I am unemployed and receiving unemployment benefits?

Unemployment insurance benefits are not subject to wage taxes. Wages earned prior to unemployment may be taxable under the terms above. However, you are more than welcome to file a request for a determination.

How long do I have to file for a refund?

City Code permits taxpayers to file up to three years beyond the tax period for the application to request a refund.

What if I have yet to file for a refund for the 2020 Tax Year?

Employees have up to three years to file for tax refunds. However, special conditions are to be considered for the 2020 Tax Year. The State of Delaware issued a Phase I State of Emergency for the period of March 17 to June 15, 2020, requiring a shelter-in-place order for employees not designated by the Governor of Delaware as essential. If you worked outside the City either because your employer required it during this time or the State ordered you to do so because you were not defined as an essential employee, then you **may be eligible for a refund**. If you were not required to work outside the City because you were an essential employee, then you **may not be eligible for a refund**.

Employees not listed as essential will be eligible to request a refund for that period only if the employer certifies the employees in fact did work remotely outside of the City. For example, if the government requires an accountant for a financial firm (as a non-essential employer defined under the State of Emergency) to shelter in place and work remotely, then the employee **is eligible for a refund for this period of time only**. Employees must clearly note the periods of time and the reason for the request. The employer must certify that the employee was not essential under the requirements of the State of Emergency. The Director of Finance may require additional proof from the employee and the employer.