



Legislation Details (With Text)

File #: 16-1996 **Version:** 1 **Name:** Amendment to Payroll Ordinance
Type: Ordinance **Status:** Adopted
File created: 12/20/2016 **In control:** Administration
On agenda: 12/21/2016 **Final action:** 1/19/2017

Title: ORDINANCE AMENDING AND SUPPLEMENTING TITLE X, FINANCE AND TAXATION, CHAPTER 21, NEWARK PAYROLL TAX, OF THE REVISED GENERAL ORDINANCES OF THE CITY OF NEWARK, NEW JERSEY, 2000, AS AMENDED AND SUPPLEMENTED, [I] MAKING THE ORDINANCE MORE CONSISTENT WITH THE NEW JERSEY EMPLOYER PAYROLL TAX STATUTE AND [II] AUTHORIZING A REDUCTION IN NEWARK PAYROLL TAX OBLIGATIONS FOR EMPLOYERS WITH WORKFORCES MORE THAN 50% OF WHICH ARE NEWARK RESIDENTS.

Sponsors: Council of the Whole

Indexes:

Code sections:

Date	Ver.	Action By	Action	Result
1/19/2017	1	Municipal Council	Close on Public Hearing and Adopt	Pass
1/5/2017	1	Municipal Council	Adopt on First Reading	Pass
12/21/2016	1	Municipal Council	Advance to First Reading	Pass

ORDINANCE AMENDING AND SUPPLEMENTING TITLE X, FINANCE AND TAXATION, CHAPTER 21, NEWARK PAYROLL TAX, OF THE REVISED GENERAL ORDINANCES OF THE CITY OF NEWARK, NEW JERSEY, 2000, AS AMENDED AND SUPPLEMENTED, [I] MAKING THE ORDINANCE MORE CONSISTENT WITH THE NEW JERSEY EMPLOYER PAYROLL TAX STATUTE AND [II] AUTHORIZING A REDUCTION IN NEWARK PAYROLL TAX OBLIGATIONS FOR EMPLOYERS WITH WORKFORCES MORE THAN 50% OF WHICH ARE NEWARK RESIDENTS.

WHEREAS, in accordance with the New Jersey Employer Payroll Tax statute, N.J.S.A. 40:48C-14, *et seq.*, the City of Newark previously adopted a “Newark Payroll Tax” ordinance codified at Section 10:21-1, *et seq.*, of the Revised General Ordinances of Newark (a copy of which is attached hereto and made a part hereof); and

WHEREAS, in order to promote the effective and efficient enforcement of the Newark Payroll Tax ordinance, the Mayor of the City of Newark recommends that certain provisions of said ordinance be amended in order to make them more consistent with the New Jersey Employer Payroll Tax statute, which will in turn act to clarify and simplify the procedures for the imposition and collection of taxes under the Newark Payroll Tax ordinance; and

WHEREAS, in order to promote the hiring of Newark residents by employers located in Newark, the Mayor of the City of Newark recommends that the Newark Payroll Tax ordinance be amended in order to provide that for employers who have workforces 50% or more of which are Newark residents, the Newark Payroll Tax shall not be imposed relative to those employees above the 50% threshold who are Newark residents; and

WHEREAS, the Mayor and the Municipal Council of the City of Newark believe that such amendments

of the Newark Payroll Tax ordinance would be beneficial to, and in the best interests of, the City of Newark and its residents.

NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:

[Note: Additions are in Bold and double Underlined and Deletions are shown in Bold and ~~Strikethroughs~~.]

Section 1: Title X, Finance and Taxation, Chapter 21, Newark Payroll Tax, Section 2, Definitions, of the Revised General Ordinances of the City of Newark, New Jersey, 2000, as amended and supplemented, is hereby amended by amending the definition of "payroll" as follows:

Payroll shall mean an amount equal to the total remuneration paid by an employer to employers which is subject to Federal income tax withholding by the employer for Federal income tax purposes for services rendered, other than domestic services in a private residence, if:

- a. The services are performed within the City of Newark; or
- b. The services are performed outside of the City of Newark, but **within the State of New Jersey, and** the place from **where which** the services are supervised is in the City of Newark,~~;~~ **or**
- c. **The services are performed both inside and outside of the City and outside the State of New Jersey, the place from where the services are supervised is in the City, and one of the following conditions is satisfied:**
 1. **The employer treats the services of an employee who does not work in the City as "employment" under N.J.S.A. 43:21-19(i)(1)(F) (the New Jersey Unemployment Compensation Law), in which case, the same amount of such employer's payroll that is treated as remuneration for unemployment compensation tax purposes shall be considered payroll for purposes of the payroll tax by substituting "the City" in such section for "this State;" or**
 2. **The employer has either elected to treat such employment as being subject to, or such employment is otherwise deemed to be subject to, N.J.S.A. 43:21-1 et seq. (the New Jersey Unemployment Compensation Law), in which case the same amount of such employer's payroll that is treated as remuneration for unemployment compensation tax purposes shall be considered payroll for purposes of the payroll tax.**

Such amount shall generally be based on the amount reportable by the employer on its Federal Form 941 and shall include, but not be limited to, all wages, bonuses, commissions, tips, property, the right to receive property, taxable benefits and all other forms of compensation. **Payroll shall exclude (i) amounts reportable to another municipality and subject to its payroll tax (but excluding any wage tax) and (ii) amounts deducted from the employee's compensation as a pre-tax deduction for retirement, health and medical benefits and life insurance and other benefits and the employer's share of FICA, Medicare tax and unemployment taxes.**

Section 2: Title X, Finance and Taxation, Chapter 21, Newark Payroll Tax, Section 3, Tax Imposed, of the Revised General Ordinances of the City of Newark, New Jersey, 2000, as amended and supplemented, is hereby amended as follows:

10:21-3. TAX IMPOSED.

Except as provided in Subsection a. below, there There is hereby imposed on every

employer a tax equal to one (1%) percent of its payroll. ~~An employer shall receive a credit to the extent it has paid a payroll tax imposed on the employer by another municipality, to the extent such tax does not exceed the amount of tax imposed by the City.~~

a. *Apportionment of Payroll: In General.* For purposes of applying subsection a. within the definition of payroll above, where an employer's payroll expense is incurred by reason of work performed or services rendered by an individual, wholly within the City, all of the payroll expense for such individual shall be attributable to the City and subject to tax hereunder. Where payroll expense is incurred by reason of work performed or services rendered by an individual partly within and partly without the City, the portion of such payroll expense attributable to the City (and subject to tax under this chapter) shall be determined as follows:

1. Except as otherwise provided in this section, the portion of such payroll expense attributable to the City shall be the portion of such payroll expense which the total number of working hours employed within the City bears to the total number of working hours within and without the City.

2. If the amount of such payroll expense depends on the volume of business transacted by such individual, then the portion of such payroll expense attributable to the City shall be the portion of such payroll expense which the volume of business transacted by such individual in the City bears to the volume of business transacted by such individual within and without the City.

3. If it is impracticable, unreasonable or improper to apportion such payroll expenses as aforesaid either because of the particular nature of the services of such individual, or on account of the unusual basis of compensation, or for any other reason, then the amount of such payroll earning reasonably attributable to work performed or services rendered in the City shall be determined on the basis of all relevant facts and circumstances of the particular case, in accordance with any rulings or regulations issued or promulgated by the Director.

4. If the Director determines that the percentage of payroll expenses attributable to the City, for any one (1) or more persons, is a relatively stable percentage, the Director may establish that percentage at a prima facie evidence of payroll expense attributable to the City; provided, that the Director shall condition the establishment of such fixed percentage upon the obligation of the taxpayer to report immediately to the Director any significant change in the taxpayer's mode of business which may impact the portion of the person's payroll expense which is attributable to the City; and, provided further, that the Director may rescind any such fixed percentage at any time by providing written notice to the taxpayer of such rescission.

a. *Employers with workforces more than 50% of which are Newark residents.* An employer with a workforce more than fifty percent (50%) of which are residents of the City of Newark, shall incur no payroll tax relative to those Newark-resident employees above the 50% threshold. The payroll tax relative to employees who are not Newark residents, however, shall remain at one percent (1%). In order for an employer to claim and pay a reduced payroll tax obligation pursuant to the provisions of this Subsection, the employer must provide the Director of Finance, with written evidence and documentation, to the Director's satisfaction, of the relevant employees' Newark residency statuses.

b. *Charitable Organizations.* A charitable organization, as defined above, shall calculate the tax that would otherwise be attributable to the City and file a return, but shall only pay the tax on

that portion of its payroll expense attributable to business activity for which a tax may be imposed pursuant to Section 511 of the Internal Revenue Code. If the charity has purchased or is operating branches, affiliates, subsidiaries or other business entities that do not independently meet the standards of a charity, the tax shall be paid on the payroll attributable to such for profit branches, affiliates or subsidiaries, whether or not the employees are leased or placed under the auspices of the charity's umbrella or parent organization.

Section 3: Any prior ordinances or parts thereof inconsistent herewith are hereby repealed.

Section 4: If any part of this ordinance is declared unconstitutional or illegal, the remaining provisions shall continue in full force and effect.

Section 5: This Ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey.

STATEMENT

This Ordinance amends the Newark Payroll Tax ordinance in order to [i] make the ordinance more consistent with the New Jersey Employer Payroll Tax Statute and [ii] provide that for employers who have workforces more than 50% of which are Newark residents, the Newark Payroll Tax shall not apply to those employees above 50% who are Newark residents.