

Impact of Act 43 on Unincorporated Entities

Withholding Requirements of Act 43

► 72 P.S. §7316.2 (effective 12/29/2017):

(a) To the extent not already required to withhold tax on payments under section 316.1, *a person that:*

(1) makes payments of income from sources within this Commonwealth described in section 303(a)(1) or (2) to either a nonresident individual or an entity that is disregarded under section 307.21 [72 P.S. §7307.21] that has a nonresident member; and

(2) is required under section 335(f)(1) to file a copy of form 1099-MISC with the department regarding the payments; shall deduct and withhold from the payments an amount equal to the net amount of the payments multiplied by the tax rate specified under section 302(b).

(b) Withholding of tax by payors is optional and at the discretion of the payor with respect to payees who receive payments of less than \$5,000 annually from the payor.

(c) This section shall not apply to payments made by a payor to a payee if the payor is:

(1) The United States or an agency or instrumentality thereof; or

(2) The Commonwealth or an agency, instrumentality or political subdivision thereof.

(d) The department may prescribe regulations to implement and clarify the withholding requirement set forth in this section.

Withholding Requirements of Act 43 (cont.)

- ▶ §7316.2 applies to compensation paid to an unincorporated entity that has a single owner, unless it is taxed as a corporation (72 P.S. §7307.21)
- ▶ Per 72 P.S. §7316 (eff. 12/29/2017), “[t]he term [payments] does not include a partner or shareholder’s distributive share of income from a partnership or Pennsylvania S corporation.”
- ▶ Per 72 P.S. §7301, partnership “means a domestic or foreign general partnership, joint venture, limited partnership, limited liability company, business trust or other unincorporated entity that for Federal income tax purposes is classified as a partnership.”

Withholding Requirements of Act 43 (cont.)

▶ 72 P.S. §7324.4 (effective 12/29/2017):

(a) Every lessee of Pennsylvania real estate who makes a lease payment in the course of a trade or business to a nonresident lessor shall withhold Pennsylvania personal income tax on rental payments to such nonresident lessor.

(b) Every lessee shall withhold from each payment made to a lessor an amount equal to the net amount payable to the lessor multiplied by the tax rate specified under section 302(b).¹

(c) (Reserved).

(d) The withholding of tax under this section is optional and at the discretion of the lessee with respect to payments to a lessor who receives less than \$5,000 annually on a lease.

(e) For purposes of this section, the term or phrase:

(1) “Lessor” shall include an individual, estate or trust.

(2) “Lease payment” shall include, but not be limited to, rents, royalties, bonus payments, damage payments, delay rents and other payments made pursuant to a lease, other than compensation derived from intangible property having a taxable or business situs in this Commonwealth. Classification as a “lease payment” under this section is solely for the purposes of establishing withholding requirements and shall not be relevant for a determination as to the proper income classification of any such lease payment.

(3) “In the course of a trade or business” shall include any person or business entity making lease payments to a nonresident or agent of a nonresident who collects rent or lease payments on behalf of a nonresident owner other than a tenant of residential property.