

## **Section 509. Life Partner and Transgender Care Health Benefits Tax Credits<sup>120</sup>**

A. Definitions. For purposes of this Section, the following definitions shall apply:

1. “Code.” The Philadelphia Code.
2. “Life Partner.” As defined in §1-103 of the Code.
3. “Life Partnership.” As defined in §1-103 of the Code.
4. “Tax Year.” As defined in Section 101 of these regulations.
5. “Transgender Care.” Medically necessary treatment for gender dysphoria and gender identity disorder, including office visits, laboratory tests, prescription drugs, hormone treatments, counseling, and transitional surgeries necessary for the treatment of either.

B. Eligibility for Life Partner Health Benefits Tax Credit. The Life Partner Health Benefits Tax Credit provided under §19-2604(14) of the Code is effective beginning with Tax Year 2013 and shall only be awarded to businesses that meet all of the following criteria:

1. Health insurance coverage is made available for the Life Partners of its employees and children of such Life Partners, on the same basis and to the same extent as such business makes health insurance coverage available for spouses of employees, and children of such spouses.
2. During the three (3) tax years immediately prior to the tax year for which the business first claims a credit pursuant to §19-2604(14) of the Code, the business did not make health insurance coverage available for the Life Partners of its employees, and children of such Life Partners, on the same basis and to the same extent as such business made health insurance coverage available for spouses of employees, and children of such spouses.

Examples – The following examples are based on the assumptions that a business meets all eligibility criteria, unless otherwise stated; “tax year” is a 12-month period beginning January 1 and ending December 31, inclusive.

Example No. 1

On January 1, 2013, a business purchased health insurance coverage which makes

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<sup>120</sup> Added by regulation submitted to the Department of Records on August 15, 2013 (effective September 16, 2013).

coverage available as described in subsection 509(B)(1); such coverage continues to be available in subsequent tax years. The business would be eligible to be awarded a tax credit for tax year 2013 because the coverage is continuously available for a full tax year.

#### Example No. 2

On either January 1, 2010, January 1, 2011 or January 1, 2012, a business makes health insurance coverage available as described in subsection 509(B)(1). In tax year 2013, the business would not be eligible to be awarded a Life Partner Health Benefits Tax Credit because such coverage was available at a point in time during the three tax years immediately preceding tax year 2013.

#### Example No. 3

On July 1, 2013, a business purchased health insurance coverage which makes coverage available as described in subsection 509(B)(1); such coverage is continuously available for subsequent tax years. The business is eligible for a Life Partner Health Benefits Tax Credit as provided under subsection 509(B). The business would not be eligible to claim a tax credit for 2013, as provided under subsection 509(E), because the coverage is not continuously available for a full tax year. The business would, however, be eligible to claim a tax credit for tax years 2014 and 2015.

C. Eligibility for Transgender Care Health Benefits Tax Credit. The Transgender Care Health Benefits Tax Credit provided under §19-2604(14) of the Code shall only be awarded to businesses that meet all of the following criteria:

1. Health insurance coverage is made available for transgender care on the same basis and to the same extent as the business makes health insurance coverage available for other medically-necessary treatment. For purposes of this Section, the term “transgender care” shall have the meaning as defined under §19-2604(14)(c) of the Code and subsection 509(A).
2. During the three (3) tax years immediately prior to the tax year for which the business first claims a credit pursuant to §19-2604(14) of the Code, the business did not make health insurance coverage available for transgender care on the same basis and to the same extent as such business made health insurance coverage available for other medically necessary treatments.

Examples – The following examples are based on the assumptions that a business meets all eligibility criteria, unless otherwise stated; “tax year” is a 12-month period beginning January 1 and ending December 31, inclusive.

#### Example No. 1

On January 1, 2013, a business purchased health insurance coverage which makes coverage available as described in subsection 509(C)(1); such coverage continues to be available in subsequent tax years. The business would be eligible to be awarded a tax credit for tax year 2013 because the coverage is continuously available for a full tax year.

Example No. 2

On January 1, 2010, January 1, 2011 or January 1, 2012, a business makes health insurance cover available as described in subsection 509(C)(1). In tax year 2013, the business would not be eligible to be awarded a Transgender Care Health Benefits Tax Credit because such coverage was available at a point in time during the three tax years immediately preceding tax year 2013.

Example No. 3

On July 1, 2013, a business purchased health insurance coverage which makes coverage available as described in subsection 509(C)(1); such coverage is continuously available for subsequent tax years. The business is eligible for a Transgender Care Health Benefits Tax Credit as provided under subsection 509(C). The business would not be eligible to claim a tax credit for 2013, as provided under subsection 509(E), because the coverage is not continuously available for a full tax year. The business would, however, be eligible to claim a tax credit for tax years 2014 and 2015.

D. Application. Application for the Life Partner or Transgender Care Health Benefits Tax Credit shall be on such form or forms as prescribed by the Department, and shall include documentation that the business meets the eligibility criteria specified under §19-2604(14)(b) or §19-2604(14)(c) of the Code and subsections 509(B) or 509(C) of these regulations. A business may apply for either credit or for both credits. Eligibility for each credit shall be determined independently.

1. Application for Life Partner Health Benefits Tax Credit. A business shall submit an application, as prescribed by the Department, which shall include the following:

a. Certification statement signed by an authorized representative which certifies the following facts:

- i. The health benefits plan does not include exclusionary language regarding coverage for an employee's Life Partner or for the children of such Life Partners.
- ii. The business makes health insurance coverage available for the Life Partners of its employees, and children of such Life Partners, who are a member of a Life Partnership verified pursuant to §9-1123 of the Code (relating to verification of life partnership); and that such coverage is made available on the same basis and to the same extent as the business makes available for spouses of employees and children of such spouses;

iii. Employees enrolled to have such health insurance coverage for their Life Partner, or for the children of such Life Partner, have provided the business with a copy of either the “Life Partnership Acceptance Letter” or the ceremonial “Certificate of Life Partnership” or any other official document that the Life Partner received from the City of Philadelphia Commission on Human Relations which verifies that a Life Partner has been registered and that the Life Partnership is recognized as such under the Fair Practices Ordinance pursuant Chapter 9-1100 of the Code; and

iv. During the three (3) tax years immediately preceding the tax year for which the business first would have been eligible a credit pursuant to §19-2604(14) of the Code, the business did not make health insurance coverage available for the Life Partners of its employees, and children of such Life Partners, on the same basis and to the same extent as the business made health insurance coverage available for spouses of employees and children of such spouses.

b. Date health insurance coverage became available for the Life Partners of employees and the children of such Life Partners;

c. Amount expended by the business during the tax year to purchase health benefits for the Life Partners and the children of such Life Partners.

d. Calculation of the Life Partner Health Benefits Tax Credit, on a form as prescribed by the Department;

e. Such other documentation or information as the Department may require.

2. Application for Transgender Care Health Benefits Tax Credit. A business shall submit an application, as prescribed by the Department, which shall include the following:

a. Certification statement signed by an authorized representative which certifies the following facts:

i. The business makes health insurance coverage available for Transgender Care on the same basis and to the same extent as the business makes health insurance coverage available for other medically-necessary treatment;

ii. The transgender care coverage available is as defined under subsection 509(A); the health benefits plan does not include exclusionary language regarding transgender care as described under §19-2604(14)(c) of the Code and subsection 509(A); and

iii. During the three (3) tax years immediately preceding the tax year for which the business first would have been eligible to claim a credit pursuant to §19-2604(14) of the Code, the business did not make health insurance coverage for Transgender Care on the same basis and to the same extent as the

business made such coverage available for other medically necessary treatment.

- b. Date health insurance coverage became available for Transgender Care;
- c. Amount expended by the business during the tax year to include Transgender Care coverage in the health insurance coverage provided to employees.
- d. Calculation of the Transgender Care Health Benefits Tax Credit, on a form as prescribed by the Department;
- e. Such other documentation or information as the Department may require.

E. Tax Credit.

1. For any full tax year in which a business continuously meets the eligibility criteria set forth in subsection (509)(B) or subsection (509)(C), the business shall be eligible to claim a non-refundable tax credit against its Business Income and Receipts Tax (“BIRT”) liability for such tax year as follows:

- a. Life Partner Health Benefits Tax Credit. The lesser of \$4,000 or 25% of the amount expended by the business during the tax year to purchase health benefits for the Life Partners of its employees and the children of such Life Partners.
- b. Transgender Care Health Benefits Tax Credit. The lesser of \$4,000 or 25% of the amount expended by the business during the tax year to include transgender care coverage in the health insurance coverage provided to employees.

2. No business may claim a tax credit under this Section 509 in any year other than as provided in subsection (509)(E)(1)(a) with respect to the Life Partner Health Benefits Tax Credit, or subsection (509)(E)(1)(b) with respect to the Transgender Care Health Benefits Tax Credit. No business may claim either of the tax credits under this Section 509 in more than two (2) years, and, with respect to each credit, such years shall be consecutive.

3. Computation of Tax Credits – The following examples are based on the assumptions that a business meets all eligibility criteria specified in subsection 509(B) or subsection 509(C), unless otherwise stated. “Tax year” is a 12-month period beginning January 1 and ending December 31, inclusive.

Example No. 1

On January 1, 2013, a business purchased health insurance coverage for employees costing \$500,000 which makes coverage available as described either under subsection 509(B) or subsection 509(C); the cost of the plan without

coverage of either Life Partners and children of such Life Partners or transgender care would have been \$400,000. Employees contributed \$20,000 through payroll deductions towards the cost of such coverage during tax year 2013. Computation of the Life Partner or Transgender Care Health Benefits Tax Credit would be as follows:

- Tax Year 2013
  - Lesser of \$4,000; or
  - 25% of the amount expended by the business during the tax year to make such coverage available i.e.,  $\$500,000 - \$400,000 = \$100,000$ ;  $\$100,000 - \$20,000 = \$80,000$ ;  $\$80,000 \times 25\% = \$20,000$ ;
  - The credit available to be claimed by the business would be \$4,000 with respect to each tax credit.
- Tax Year 2014
  - If the difference in costs for insurance with and without the benefits is the same in Tax Year 2014 as they were in 2013, and the employee contributions remained the same, the same \$4,000 credit is available to be claimed with respect to each tax credit.
- Tax Year 2015
  - The business would not be eligible to claim a tax credit. No business may claim either of the tax credits provided under this Section 509 in more than two consecutive tax years.

#### Example No. 2

Assuming the same facts as in Example No. 1, but also assuming that for the tax year ending December 31, 2014, the amount expended for health insurance coverage was \$550,000. The cost of the plan without coverage of either Life Partners and children of such Life Partners or transgender care would have been \$440,000. Computation of the Life Partner or Transgender Care Health Benefits Tax Credit would be as follows:

- Tax Year 2013
  - Lesser of \$4,000; or
  - 25% of the amount expended by the business during the tax year to make such coverage available i.e.,  $\$500,000 - \$400,000 = \$100,000$ ;  $\$100,000 - \$20,000 = \$80,000$ ;  $\$80,000 \times 25\% = \$20,000$ ;
  - The credit available to be claimed by the business would be \$4,000 with respect to each tax credit.
- Tax Year 2014
  - Lesser of \$4,000; or
  - 25% of the amount expended by the business during the tax year to make such coverage available i.e.,  $\$550,000 - \$440,000 = \$110,000$ ;  $\$110,000 -$

- $\$20,000 = \$90,000; \$90,000 \times 25\% = \$22,500;$
- The credit available to be claimed by the business would be \$4,000 with respect to each tax credit.
- Tax Year 2015
  - The business would not be eligible to claim a tax credit. No business may claim either of the tax credits provided under this Section 509 in more than two consecutive tax years.

### Example No. 3

On January 1, 2014, a business changed its existing health insurance plan in order to make coverage available for the Life Partners of its employees and for transgender care. The cost of the health insurance plan was increased by \$50,000 to make such coverage available; \$40,000 of the increase is attributable to making coverage available for Life Partners and children of Life Partners; and \$10,000 is attributable to including coverage for transgender care. Such health insurance coverage continues to be available as of the end of tax year 2016. Computation of the tax credit would be as follows:

- Tax Year 2014
  - Life Partner Health Benefits Tax Credit
  - Lesser of \$4,000; or
  - 25% of the amount expended by the business during the tax year to purchase health benefits for the Life Partners and children of Life Partners i.e.,  $\$40,000 \times 25\% = \$10,000;$
  - The credit available to be claimed would be \$4,000.
- Transgender Care Health Benefits Tax Credit
  - Lesser of \$4,000; or
  - 25% of the amount expended by the business during the tax year to include transgender care in the health coverage provided to employees i.e.,  $\$10,000 \times 25\% = \$2,500;$
  - The credit available to be claimed would be \$2,500.

The total tax credits available to be claimed by the business for tax year 2014 would be \$6,500.

- Tax Year 2015
  - If the amount expended for and costs of benefits for 2015 is the same as the amount expended for tax year 2014, the total tax credits available to be claimed by the business would also be \$6,500.
- Tax Year 2016
  - The business would not be eligible to claim a tax credit. No business may claim either of the tax credits provided under this Section 509 in more than two tax years, and with respect to each credit, such years

must be consecutive.

#### Example No. 4

Assuming the same facts as in Example No. 3, but also assuming that employees enrolled for such health coverage contributed \$2,500 during tax year 2014 towards the cost of each type of coverage, the computation would be as follows:

- Tax Year 2014
  - Life Partner Health Benefits Tax Credit
    - Lesser of \$4,000; or
    - 25% of the amount expended by the business during the tax year to purchase health benefits for the Life Partners and children of Life Partners i.e.,  $\$40,000 - \$2,500 = \$37,500$ ;  $\$37,500 \times 25\% = \$9,375$ ;
    - The credit available to be claimed would be \$4,000.
  - Transgender Care Health Benefits Tax Credit Lesser of \$4,000; or 25% of the amount expended by the business during the tax year to include transgender care in the health coverage provided to employees i.e.,  $\$10,000 - \$2,500 = \$7,500$ ;  $\$7,500 \times 25\% = \$1,875$ ; The credit available to be claimed would be \$1,875.

The total tax credits available to be claimed by the business for tax year 2014 would be \$5,875.

- Tax Year 2015
  - If the amount expended for and costs of benefits for 2015 is the same as the amount expended for tax year 2014, the total tax credits available to be claimed by the business would also be \$5,875.
- Tax Year 2016
  - The business would not be eligible to claim a tax credit.

#### Example No. 5

On July 1, 2013, a business changed its existing health insurance plan in order to make coverage available for the Life Partners of its employees. The cost of the health insurance plan was increased by \$50,000, to make such coverage available. Coverage continued past tax year 2015. Computation of the tax credit would be as follows

- Tax Year 2013
  - The tax credit would be \$0. The business is not eligible to claim (calculate) a tax credit – the coverage is not available for a full tax year.



- Tax Year 2014
  - Lesser of \$4,000; or
  - 25% of the amount expended by the business during the tax year to purchase health benefits for the Life Partners of its employees and the children of such Life Partners i.e.,  $\$50,000 \times 25\% = \$12,500$ ;
  - The credit available to be claimed by the business would be \$4,000.
- Tax Year 2015
  - Same as for tax year 2014.
- Tax Year 2016
  - The business would not be eligible to claim a tax credit. No business may claim either of the tax credits provided under this Section 509 in more than two consecutive tax years.

#### Example No. 6

On July 1, 2013, a business changed its existing health insurance plan in order to make coverage available for the Life Partners of its employees and for transgender care. The cost of the health insurance plan was increased by \$100,000 to make such coverage available; \$75,000 of the increase is attributable to making coverage available for Life Partners and children of Life Partners; and \$25,000 is attributable to including coverage for transgender care. Employees enrolled for such health coverage contributed \$10,000 during the tax year towards the cost of the coverage. Coverage continued past tax year 2015.

Computation of the tax credit would be as follows:

- Tax Year 2013
  - The tax credit for the Life Partner Health Benefits Tax Credit and the Transgender Care Health Benefits Tax Credit would be \$0. The business is not eligible to claim a tax credit because the coverage is not available for a full tax year.
- Tax Year 2014
  - Life Partner Health Benefits Tax Credit
    - Lesser of \$4,000; or
    - 25% of the amount expended by the business during the tax year to purchase health benefits for Life Partners and the children of Life Partners i.e.,  $\$75,000 - \$10,000 = \$65,000$ ;  $\$65,000 \times 25\% = \$16,250$ ;
    - The credit available to be claimed would be \$4,000.
  - Transgender Care Health Benefits Tax Credit
    - Lesser of \$4,000; or
    - 25% of the amount expended by the business during the tax year to

include transgender care coverage i.e.,  $\$25,000 - \$10,000 = \$15,000$ ;  
 $\$15,000 \times 25\% = \$3,750$ ;

- The credit available to be claimed would be \$3,750.

The total tax credits available to be claimed by the business for tax year 2014 would be \$7,750.

- Tax Year 2015
  - If such health insurance coverage is available as of the end 2015 and the amount expended is the same as expended for tax year 2014, the total tax credits available to the business for tax year 2015 would also be \$7,750.
- Tax Year 2016
  - The business would not be eligible to claim a tax credit. No business may claim either of tax credits provided under this Section 509 in more than two tax years, and with respect to each credit, such years must be consecutive.

4. Limitation on Aggregate Claims. In the event that the aggregate amount of tax credits under §19-2604(14) of the Code to which all businesses are entitled in any tax year under §19-2604(14)(e)(i) of the Code would exceed \$2,000,000, the amount of tax credit awarded to any business under §19-2604(14)(e)(i) and subsection (509)(E)(1) of these regulations shall instead be computed as follows: (A) obtaining a reduction factor by dividing \$2,000,000 by the aggregate amount of all tax credits sought in that year under subsection (509)(E)(1); and (B) multiplying the amount of the tax credit to which a business would be entitled under subsection (509)(E)(1) by the reduction factor. The Department shall notify any business, entitled to a tax credit under §19-2604(14)(e)(i) of the Code, whose tax credit is affected by the Department's computation of a reduction factor.

5. Unused tax credits provided under §19-2604(14) of the Code and this Section (509) may not be carried forward.

6. A business may neither assign nor transfer tax credits to any other business, including a subsidiary or other affiliate of the business.

#### F. Repayment of Credits.

1. A business shall repay any Life Partner Health Benefits Tax Credits claimed for a tax year pursuant to §19-2604(14) of the Code and subsection 509(E) if, at any time within three (3) years from the end of such tax year, the business ceases to make health benefits available for the Life Partners of its employees, and children of such Life Partners, on the same basis and to the same extent as the business makes such benefits available for spouses of employees, and children of such spouses. A business shall repay any Transgender Care Health Benefits Tax Credits claimed for a tax year pursuant to §19-2604(14) of the Code and

subsection 509(E) if, at any time within three (3) years from the end of such tax year, the business ceases to make transgender care benefits available on the same basis and to the same extent as the business makes health insurance coverage available for other medical needs.

2. Conditions Required to Avoid Automatic Forfeiture of Tax Credits Claimed.

a. After a business has claimed a tax credit pursuant to §19-2604(14) of the Code and subsection 509(E) for a tax year or for a maximum of two (2) consecutive tax years, a business shall provide affirmation to the Department for each of the three (3) tax years following the tax year, or the two consecutive tax years, for which the tax credit was claimed. The affirmation statement must be signed by an authorized representative and shall be submitted to the Department no later than June 30<sup>th</sup> following the end of each three (3) respective tax years.

b. Such affirmation shall state that the business either has continued to make health benefits available for the Life Partner of its employees and children of such employees, on the same basis and to the same extent as the business makes such benefits available for spouses, and children of such spouses, and/or has continued to make transgender care benefits available on the same basis and to the same extent as the business makes health insurance coverage available for other medical needs.

c. Failure to comply with the conditions set forth in subsection 509(F)(2) for any of the three (3) tax years following the tax year, or consecutive two (2) tax years, for which a business has claimed a tax credit pursuant to §19-2604(14) of the Code shall result in automatic forfeiture by a business of any tax credit claimed.

G. Approval Process and Issuance of Tax Credits

1. The provisions for the Life Partner and Transgender Care Health Benefits Tax Credits, pursuant to §19-2604(14) of the Code, are effective beginning with Tax Year 2013. The Department shall not award a business the Life Partner Health Benefits Tax or the Transgender Health Benefits Tax Credit for a tax year prior to Tax Year 2013.
2. Upon review of the application, calculation of the tax credits, and other documentation submitted by a business in accordance with subsection 509(D), a business shall be notified by the Department whether its application has been approved.
3. After a business's application has been approved by the Department and after a business has continuously met, for a full tax year, the eligibility criteria set forth in subsection 509(B) or subsection 509(C), a business may claim the tax credits provided under subsection 509(E) against its BIRT liability for such

tax year.

4. For issuance of the Life Partner or Transgender Care Health Benefits Tax Credit, an approved applicant shall submit the original signed copy of the BIRT Return to the appointed unit in the Department with correspondence indicating the amount of credit to be claimed against its BIRT liability for such tax year and whether the credit being claimed is the Life Partner Health Benefits Tax Credit or the Transgender Care Health Benefits Tax Credit or both tax credits. If a business is claiming both credits, the business must specify the amount of each credit. Cash refunds will not be issued for unused credits.
5. No business shall receive a Life Partner Health Benefits Tax Credit or Transgender Care Health Benefits Tax Credit if the business is not in full compliance with all applicable Philadelphia tax laws, ordinances and regulations.
6. The Department may request to examine the books and records (i.e., health benefits plan, payroll and withholding records, health insurance quotes, insurance contracts, purchase invoices/cancelled checks) used by a business to report information and prepare documentation required to be submitted under subsection 509(D) and to calculate the tax credits as provided under subsection 509(E).