

Income/Franchise:

Pennsylvania: Philadelphia Ends Nexus and Apportionment Policy for Pandemic-Related Telecommuting

Business Income & Receipts Tax (BIRT), Net Profits Tax (NPT) nexus and apportionment policies due to the COVID-19 pandemic, City of Philadelphia Dept. of Rev. (6/25/21). Following its earlier temporary guidance covering COVID-19 pandemic-related telecommuting and business nexus and apportionment [see *Business Income & Receipts Tax (BIRT), Net Profits Tax (NPT) nexus and apportionment policies due to the COVID-19 pandemic*, City of Philadelphia Dept. of Rev. (12/7/20) for more details on this temporary guidance], the City of Philadelphia (City) Department of Revenue (Department) announced that these special provisions no longer apply with respect to nexus as of June 30, 2021, and with respect to apportionment as of June 10, 2021. Accordingly, as of these two end dates, “existing tax law and regulations will govern.”

URL: <https://www.phila.gov/media/20210629145725/Nexus-sourcing-end-dates-Philadelphia-covid-19-June-2021-policy-update.pdf>

URL: <https://www.phila.gov/media/20201207154218/Nexus-sourcing-Philadelphia-covid-19-December2020-policy-update.pdf>

Under the Department’s COVID-19-related teleworking nexus guidance, it temporarily had waived the legal nexus threshold established under §19-2603 of the Philadelphia Code and under Section 103 of the City business income and receipts tax (BIRT) regulations, which generally considers the presence of employees working from home within the City as establishing sufficient nexus for “out-of-Philadelphia” businesses. According to the Department, “this waiver applies if and when an employee works from home solely as a result of the COVID-19 pandemic.” For purposes of sourcing receipts for BIRT and City net profits tax (NPT) purposes, the Department’s temporary guidance had provided that where City nonresident employees – who had been performing services in their assigned business locations within the City and had not previously been required to work from home – were working from home (i.e., outside the City) solely as a result of the COVID-19 pandemic, it deemed such services to be performed within the City. Correspondingly, City resident employees who had been performing services for employers outside the City before the COVID-19 pandemic who were temporarily working from their homes in Philadelphia also were covered by this temporary policy – that is, receipts from services performed by these City resident employees at their Philadelphia homes solely as a result of the COVID-19 pandemic were *not* sourced to the City for BIRT and NPT purposes.

Note that the Pennsylvania Department of Revenue also recently announced that its earlier guidance relating to telework and resulting tax and nexus implications during the COVID-19 pandemic expired as of June 30; after June 30, a non-filing out-of-state corporation that continues to have a Pennsylvania resident working at home potentially may have nexus for state tax purposes [see *State Tax Matters*, Issue 2021-25, for more details on the expiration of this pandemic-related state policy]. Please contact us with any questions.

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/210625_14.html

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