

Income/Franchise:

Pennsylvania: Philadelphia Addresses P.L. 86-272 and Nexus Policy for Pandemic-Related Telecommuting

Frequently Asked Questions Regarding the Expiration of Philadelphia's Temporary Nexus Waiver, City of Philadelphia Dept. of Rev. (2/10/22). Following its earlier temporary guidance covering COVID-19 pandemic-related telecommuting and business nexus relief, including how the special provisions no longer apply with respect to nexus as of June 30, 2021 [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. (6/25/21) for details on the expiration of these special provisions], the City of Philadelphia (City) Department of Revenue (Department) issued answers to some related frequently asked questions (FAQs) concerning the City's business income and receipts tax (BIRT). The Department explains that an entity generally is considered to have nexus for BIRT purposes when it has one or more employees conducting business activities on its behalf in the City; therefore, an entity located outside the City which continues to have a Philadelphia resident employee(s) working from home after June 30, 2021 "will have nexus in 2021 based on the activities of that remote worker(s)." The Department also explains that the determination of what constitutes a "remote workforce" in the City is based on facts and circumstances, including official company policies regarding remote work arrangements, as well as the nature and regularity of business activity in the City.

URL: <https://www.phila.gov/media/20220210082003/FAQs-regarding-the-expiration-of-the-temporary-nexus-waiver-Feb-22.pdf>

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

Regarding P.L. 86-272, the Department explains that such legislation only applies to taxes based on income, including the net income portion of the BIRT. In this respect, the Department states that taxpayers with nexus in Philadelphia are still subject to the gross receipts portion of the BIRT, even if their Philadelphia activities are protected under P.L. 86-272. If a business has a physical presence in the City by virtue of its remote workforce, but its Philadelphia gross receipts are less than \$100,000, the Department clarifies that such business still has nexus for BIRT purposes because the presence of a remote workforce in Philadelphia will create nexus for the business regardless of its level of gross receipts – noting that if the business does not have a BIRT liability it may file a "No Tax Liability" (NTL) form. Lastly, the Department addresses nexus for City net profits tax (NPT) purposes, which is an income-based tax imposed on unincorporated entities on their net profits from the operation of a trade, business, profession, enterprise, or other activity by i) Philadelphia residents, even if their business is conducted outside of Philadelphia, and ii) nonresidents who conduct business within Philadelphia. Please contact us with any questions.

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