

## Income/Franchise:

### Pennsylvania: Philadelphia DOR Explains Treatment of IRC §1031 Like-Kind Exchanges Under BIRT and NPT

*Philadelphia's Tax Treatment of IRC §1031 Exchanges for Business Income and Receipts Tax (BIRT) and Net Profits Tax (NPT)*, City of Philadelphia, Pa. Dept. of Rev. (updated 9/15/22). The City of Philadelphia, Pennsylvania (City) Department of Revenue (Department) updated its guidance on the tax treatment of Internal Revenue Code (IRC) section 1031 like-kind exchanges for purposes of calculating the City's business income and receipts tax (BIRT) and net profits tax (NPT). The guidance generally concludes that:

**URL:** <https://www.phila.gov/media/20220915095421/Guidance-on-IRC-Sec-1031-BIRT-NPT.pdf>

- For the gross receipts portion of the BIRT, because there is no provision in the BIRT regulations that allows IRC section 1031 tax-free exchange treatment when reporting gains from the sale, exchange, or other disposition of property, taxable gross receipts under the BIRT includes the net realized gain on the sale or exchange of the asset;
- For the net income portion of the BIRT, taxpayers that utilize "Method I" cannot use IRC section 1031 due to BIRT Regulation 403; however, because IRC section 1031 is a provision used to determine taxable income on a federal basis, it generally must be followed for taxpayers that utilize "Method II;" and
- For purposes of calculating the NPT, a taxpayer's net gain includes the disposition of assets occurring as part of the normal operations or termination of the business.

Note that omnibus legislation enacted earlier this year [see H.B. 1342 (2022) and *State Tax Matters*, Issue 2022-28, for more details on this new law] includes Pennsylvania income tax law changes involving IRC section 1031 like-kind exchanges. Please contact us with any questions.

**URL:** [https://www.legis.state.pa.us/cfdocs/billInfo/bill\\_history.cfm?year=2021&ind=0&body=H&type=B&bn=1342](https://www.legis.state.pa.us/cfdocs/billInfo/bill_history.cfm?year=2021&ind=0&body=H&type=B&bn=1342)

**URL:** [https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220715\\_1.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220715_1.html)

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