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CITY OF PHILADELPHIA
DEPARTMENT OF REVENUE

MEMORANDUM

DATE: October 8, 2010

TO: Jeanne Reedy, Administrative Services Director, Records Department

FROM: Joseph F. Procopio Jr., Manager - Technical Advisory Staff 

SUBJECT: Advertisement of Proposed Amendments to Section 408 of the City of Philadelphia Business Privilege Tax Regulations.

This is an amendment to Section 408 of the Department of Revenue's Business Privilege Tax Regulations to add a new subsection (8) entitled *Pilot Programs*.

Would you kindly proceed to advertise, in accordance with the provisions of Section 8-407(b) the Philadelphia Home Rule Charter, the attached amendment to the Business Privilege Tax Regulation?

MEMORANDUM

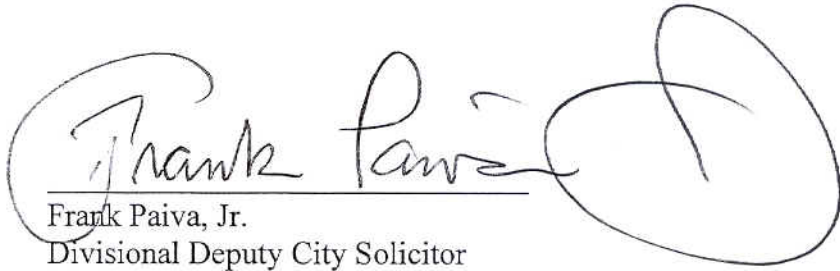
TO: Keith J. Richardson, Revenue Commissioner

FROM: Frank Paiva, Jr., Divisional Deputy City Solicitor

DATE: October 4, 2010

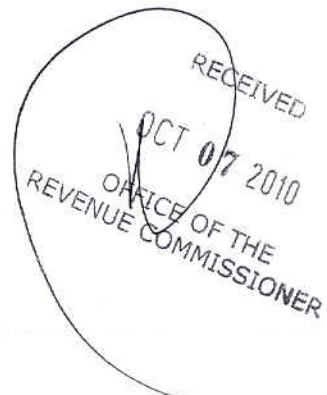
SUBJECT: Amendment to Section 408 of the Department of Revenue Business Privilege Tax Regulations that provides two pilot apportionment methodologies for specific taxpayers. The purpose of these pilot programs is to test the feasibility and effectiveness of implementing alternative apportionment methodologies.

I have reviewed the attached amendment to Section 408 of the Department of Revenue Business Privilege Tax Regulations dated September 16, 2010, and find the amendment to be legal and in proper form. In accordance with Section 8-407(a) of The Philadelphia Home Rule Charter, you may now forward this amendment to the Department of Records where they will be made available for public inspection.



Frank Paiva, Jr.
Divisional Deputy City Solicitor

Attachment



SECTION 408. APPORTIONMENT OF INCOME BY ALL PERSONS OTHER THAN PERSONS WHO ARE SUBJECT TO A TAX PURSUANT TO ARTICLES VII (BANK SHARES TAX), VIII (TITLE INSURANCE AND TRUST COMPANIES SHARES TAX), IX (INSURANCE PREMIUMS TAX) OR XV (MUTUAL THRIFT INSTITUTIONS TAX) OF THE REFORM CODE OF 1971, AND PRIVATE BANKS.

Except as otherwise provided[,] **in other sections of this regulation and in subsection (8) of this section**, a taxpayer's net income after adjustments and allocation shall be apportioned to Philadelphia in accordance with a formula composed of a property factor, a payroll factor and a receipts factor.

(1) Property Factor. ...

(2) Payroll Factor. ...

(3) Receipts Factor.

(a) Numerator. The numerator of the receipts factor shall be receipts as defined and limited by the provisions dealing with "Tax on Receipts" adjusted as follows:

(i) The following shall not be included in the numerator:

(.1) Receipts, or the net income, gain or losses attributable thereto, which are taken as an adjustment to net income (or loss) pursuant to Section 404;

(.2) Receipts that contribute to net income, gain or loss which constitutes nonbusiness income allocated within or without Philadelphia pursuant to Section 406.

(ii) The following receipts shall be included in the numerator:

(.1) Those receipts referred to in subsection 302(7)(d).

(b) Denominator. The denominator of the receipts factor shall be receipts as defined and limited by the provisions dealing with "Tax on Receipts", adjusted as follows:

(i) The following shall not be included in the denominator:

(.1) Receipts, or the net income, gain or losses attributable thereto, which are taken as an adjustment to net income (or loss) pursuant to Section 404.

(.2) Receipts that contribute to net income, gain or loss which constitutes nonbusiness income allocated within or without Philadelphia pursuant to Section 406.

(ii) The following receipts shall be included in the denominator:

(.1) Those receipts referred to in subsections 302(6), 302(7)(c) and (d) and 302(13).

(5) Weighted Averaging. A weighted average of factors shall be obtained by adding the property factor plus the payroll factor plus twice the sales factor and dividing that total by four. ...

(7) Other Methods of Apportionment. ...

(8) Pilot Programs: For Tax Year beginning on January 1, 2010, the following two pilot programs are initiated to test the feasibility and effectiveness of implementing apportionment methods different from the regularly applicable apportionment method provided in this section:

(a) **Single Receipts Factor apportionment method for businesses engaged in Research and Development in the Physical, Engineering, and Life Sciences classified in Industry 54171 of NAICS. Single Receipts Factor apportionment means that the apportionment percentage will be determined solely based on business receipts without considering property and payroll as factors.**

(i) **This industry comprises establishments primarily engaged in conducting research and experimental development in the physical, engineering, and life sciences, such as agriculture, electronics, environmental, biology, botany, biotechnology, computers, chemistry, food, fisheries, forests, geology, health, mathematics, medicine, oceanography, pharmacy, physics, veterinary, and other allied subjects.**

(ii) **For this purpose, the numerator and the denominator of the Single Receipts Factor shall be determined in accordance with the rules provided in subsection (3) of this section.**

(b) **Market-Based Sourcing of service revenue for businesses engaged in Computer Systems Design and Related Services classified in Industry 54151 of NAICS.**

(i) This industry comprises establishments primarily engaged in providing expertise in the field of information technologies through one or more of the following: (1) writing, modifying, testing, and supporting software to meet the needs of a particular customer; (2) planning and designing computer systems that integrate computer hardware, software, and communication technologies; (3) on-site management and operation of clients computer systems and/or data processing facilities; and (4) other professional and technical computer-related advice and services.

(ii) Under Market-Based Sourcing rule, the receipts factor is designed to measure the marketplace for the taxpayer's services. For the purpose of this paragraph, the gross receipts from the performance of services are included in the numerator of the apportionment factor if the recipient of the service receives all of the benefit of the service in Philadelphia. If the recipient of the service receives some of the benefit of the service in Philadelphia, the gross receipts are included in the numerator of the apportionment factor in proportion to the extent the recipient receives benefit of the service in Philadelphia. The adjustments to the numerator and the denominator of the receipts factor provided in paragraph (a) and (b) of subsection (3) of this section shall also apply for this paragraph. The following examples illustrate the application of the Market-Based Sourcing rule provided in this subparagraph:

(.1) A corporation located in Philadelphia, engaged in writing and testing software, contracts with a company located in Dallas, Texas, engaged in publishing packaged software, to write software that meets the needs of the Dallas based company's software publishing business. The Philadelphia corporation writes and tests the software in its Philadelphia office. The Dallas company uses all the software at its office in Dallas. None of the gross receipts from writing and testing the software are included in the numerator of the Philadelphia corporation's apportionment factor because none of the benefits of the service is received by the recipient of the service in Philadelphia.

(.2) A New Jersey corporation contracts with a Delaware computer software company to develop and

install custom computer software for a business office of the New Jersey Corporation located in Philadelphia. The Delaware company has business nexus in Philadelphia with sufficient exposure to the net income portion of the Business Privilege Tax. The software will only be used by the business office in Philadelphia. The software development occurs in Delaware. All of the gross receipts from the software development and installation are attributable to Philadelphia and are included in the numerator of the apportionment factor because the recipient of the service received all of the benefit of the service in Philadelphia.

(.3) A corporation from New York contracts with a computer software company from Virginia to develop and install custom computer software for its own use. The Virginia company has business nexus in Philadelphia with sufficient exposure to the net income portion of the Business Privilege Tax. The software will be used by the New York corporation in its business office located in Philadelphia and in its business office located in New York. The software development occurs in Virginia. The gross receipts from the software development and installation are included in the numerator of the apportionment factor in proportion to the extent the software is used in Philadelphia.

- (iii) For the purpose of this paragraph, in conjunction with the market-based receipts factor provided in subparagraph (ii) of this paragraph, the regularly applicable property factor provided under subsection (1) and the payroll factor provided under subsection (2) of this section shall be used. A weighted average of these three factors shall be computed in accordance with the rules provided in subsection (5) of this section.

Signature 

Date 9/16/10

In reading this text, note the following:

1. Underlined items are items added to the original text.
2. Items in bracket are items deleted from the original text.