

BUSINESS PRIVILEGE TAX / NET PROFITS TAX: Changing From a Sole Proprietorship to a Corporation

Q: A taxpayer, a sole proprietor, started a medical practice in the City of Philadelphia in January 2000. In January 2001, the practice incorporated. In May 2001, the taxpayer purchased the building that the practice operated in and the corporation started to pay rent to the doctor.

Based on the facts above, is the rental activity considered to be a continuation of the sole proprietorship if the Business Privilege Tax and Net Profits Tax returns were filed using the same social security number? Or, should the taxpayer start filing "new" Business Privilege Tax Returns in 2001 since it is a new business? Please explain the compliance requirements for the sole proprietorship and the corporation. Would the answer change if these separate, unrelated business activities took place in the same year?

A: *The BPT regulations do not specify how much time must elapse between the termination of one business activity and the commencement of another in order for the same entity to be required to file the New Start (BPTNS) returns again. The rule historically employed by the PHLDOR has been that if the new activity is within a few months of the old, the business activity will be seen as continuous. If the new activity would commence a year or so after the prior business activity, it would be seen as a new business. In the scenario presented, the sole proprietor's rental activity would be seen by the PHLDOR as a continuation of business activity since both the medical practice and rental activity occurred within a few months (i.e. 5 months) of each other. If the sole proprietor's medical practice ceased in January 2001 and the rental activity began in May 2002 (a year later than the scenario), the PHLDOR would say that a 2002 BPT NS (first year new start return) would be due for the rental activity. (**Note:** The PHLDOR may consider a taxpayer's specific facts and circumstances in order to determine intent as to the termination of an existing business activity or the commencement of a new business activity.)*

The sole proprietor (in this scenario) would be responsible for the filing of BPT and NPT returns for 2000 and forward. The corporation would be subject to the filing of the 2001BPTNS return (first year New Start return) and for each privilege year return thereafter. Both taxpayers would need to have their respective BPT license.