

January 31, 2019

Advisory Notice – Repatriation Transition Tax Policy Update

How does the City of Philadelphia treat the federal Repatriation Transition Tax provision for the Business Income and Receipts Tax (BIRT)?

Answer:

- Both the Repatriation Transition Tax income and the Repatriation Transition Tax deduction are reflected in the BIRT Income Tax base for Method II taxpayers.¹
- For most BIRT Method II taxpayers, the net Repatriation Transition Tax income will be eligible for the following deductions²:
 - Dividends received from another corporation of the same affiliated group, or
 - Dividends received from a corporation of which the receiving corporation or partnership owns at least 20% of the voting power of all classes of stock and at least 20% of each class of nonvoting stock.
- For BIRT apportionment purposes, only dividends received from < 20% owned subsidiaries would be included in the sales factor since they are included in the BIRT income tax base.
- The election to pay the Repatriation Transition Tax liability over eight (8) years is not applicable to the BIRT.
- In calculating the BIRT Gross Receipts Tax, the Repatriation Transition Tax income is excluded as:
 - Dividends received from another corporation of the same affiliated group³ or
 - Dividends received from a corporation of which the receiving corporation or partnership owns at least 20% of the voting power of all classes of stock and at least 20% of each class of nonvoting stock.⁴

Federal Changes:

- The federal Tax Cuts and Jobs Act, signed into law on December 22, 2017, contains a one-time income inclusion for the undistributed, previously untaxed post-1986 foreign

¹ BIRT Regulations Section 404(A)

² BIRT Regulations Section 404(B) 5(a)(.1) and 5(a)(.2)

³ BIRT Regulations Section 302(O)(1)

⁴ BIRT Regulations Section 302(O)(2)

earnings and profits of certain U.S.-owned businesses. For most taxpayers, the deemed income subject to Repatriation Transition Tax (Repatriation Transition Tax Income) is taxed in 2017.

- The Repatriation Transition Tax also includes a deduction for a percentage of the deemed repatriation income to achieve a lower federal effective tax rate for this income (Repatriation Transition Tax Deduction). Taxpayers may elect to pay their federal Repatriation Transition Tax liability over eight (8) years.

Note: There may be situations where taxpayers have reported the net Repatriation Transition Tax income on their originally-filed BIRT returns, contrary to the City's policy. A taxpayer may choose to file an amended BIRT return to comply with this Advisory Notice.

Because the Repatriation Transition Tax income is not income that would be reflected in a taxpayer's books and records, these federal tax adjustments would not be applicable to BIRT Method I taxpayers.