

Frequently Asked Questions Regarding the Expiration of Philadelphia's Temporary Nexus Waiver

During the pandemic, the City temporarily waived the legal nexus threshold established under §19- 2603 of the Philadelphia Code and under Section 103 of the BIRT Regulations, which considers the presence of employees working temporarily from home within Philadelphia as establishing a sufficient nexus for businesses located outside Philadelphia. This waiver applied when an employee worked from home solely as a result of the COVID-19 pandemic. This temporary policy ended on June 30, 2021 (i.e. the "End Date").

This document is a list of several Frequently Asked Questions:

1. If a business located outside the City has established a "remote workforce" in Philadelphia after June 30, 2021, will it have nexus for Business Income and Receipts Tax (BIRT) purposes?

An entity is considered to have nexus for BIRT purposes when it has one or more employees conducting business activities on its behalf in Philadelphia. Therefore, an entity located outside the City which continues to have a Philadelphia resident employee(s) working from home after the "End Date" of the City's temporary nexus policy will have nexus in 2021 based on the activities of that remote worker(s).

2. What does the City consider to be a "remote workforce?"

The determination of what constitutes a "remote workforce" in Philadelphia is based on facts and circumstances. We will consider such factors as:

- official company policies regarding remote work arrangements; and
- the nature and regularity of business activity in Philadelphia

3. What if the remote employee(s) are engaged in activities in Philadelphia which are protected by P.L. 86-272?

P.L. 86-272 only applies to taxes based on income, such as the Net Income portion of the BIRT. 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.

4. What about nexus for the Net Profits Tax (NPT)?

The NPT is an income-based tax imposed on unincorporated entities. The NPT is imposed on the net profits from the operation of a trade, business, profession, enterprise, or other activity by 1) Philadelphia residents, even if their business is conducted outside Philadelphia, and 2) Non-residents who conduct business in Philadelphia. The determination of whether an entity is doing business (has nexus) in the City for NPT is a factual analysis to be made on a case-by-case basis. P.L. 86-272 applies to the NPT since it is based on income. For tax years beginning January 1, 2019 and thereafter, unincorporated taxpayers not protected by P.L. 86-272 (i.e. service businesses) that have nexus under the Economic Nexus standard of BIRT Regulations Section 103 C. will be presumed to have nexus for the NPT as well.

5. 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, does the business have nexus for BIRT?

Yes, the presence of a remote workforce in Philadelphia will create nexus for the business, regardless of its level of gross receipts. If the business does not have a BIRT liability it may file a No Tax Liability (NTL) form.