

## **Frequently Asked Questions regarding economic nexus in the City of Philadelphia**

This document is a list of several Frequently Asked Questions about economic nexus in Philadelphia.

### **1. Will the City apply the “bright-line” economic nexus standard retroactively?**

No. For tax years beginning prior to January 1, 2019, the “Active Presence” nexus standard applies in determining whether a company is doing business in the City. See BIRT Regulations Section 103. B. (Active Presence Standard – Prior to 2019).

### **2. If a business has a physical presence in the City, but its Philadelphia gross receipts are less than \$100,000, does the business have nexus?**

Yes. A business that has a physical location in the City will have nexus, regardless of its level of Philadelphia gross receipts. Physical presence commonly consists of ownership or rental of a store, warehouse, office, or having an employee or representative solicit business in the City.

### **3. Does Public Law 86-272 provide immunity from the Gross Receipts portion of the BIRT?**

No. P.L. 86-272 only applies to taxes based on income, such as the Net Income portion of the BIRT. Taxpayers with nexus are subject to the Gross Receipts portion of the BIRT, even if their Philadelphia activities are protected under P.L. 86-272.

### **4. How are Philadelphia gross receipts determined for purposes of the \$100,000 nexus threshold?**

Only receipts from business done in Philadelphia, as determined under our sourcing rules, are considered Philadelphia gross receipts. Receipts from sales of tangible personal property are Philadelphia gross receipts if the goods are physically delivered to a customer in the City. Receipts from sales of services are Philadelphia gross receipts to the extent the service is performed in the City,

except for businesses that qualify as Software Companies. Receipts of a Software Company are Philadelphia receipts if the customer receives the benefit of the service in Philadelphia (i.e. market-based sourcing).

**5. What if a business exceeds the \$100,000 nexus threshold in the current year and falls below the threshold in the following year?**

Taxpayers filing electronically through the Philadelphia Tax Center may simply affirm that they have less than \$100,000 in Philadelphia receipts and will not be required to file a complete BIRT return. A “No Tax Liability” form is available for those taxpayers who still file a paper return. If you no longer have nexus but anticipate conducting business in the City in the future, you may wish to take this approach instead of closing your BIRT account. Please consult with an accountant or tax advisor regarding your specific BIRT filing requirements.

**6. What is the City’s authority for adopting “bright-line” economic nexus for the BIRT, since *Wayfair* is a sales and use tax case?**

Prior to *Wayfair*, there was uncertainty as to whether the *Quill* physical nexus standard also applied to income-based taxes. Several states had already established "factor presence" nexus standards for corporate income taxes and gross receipts taxes. In addition, numerous states had developed case law holding that the U.S. Commerce Clause does not require a physical presence to assert income tax jurisdiction. Finally, several other states had statutorily imposed corporate income tax economic nexus by expanding their "doing business" statutes. In short, the spillover of economic nexus to the corporate income tax began years before *Wayfair*.

**7. At present, is Philadelphia the only local taxing jurisdiction that has adopted “bright-line” economic nexus for income tax?**

No. Effective January 1, 2019, San Francisco adopted an economic nexus standard for its business registration fee and select city taxes, including the gross receipts tax.

**8. Does the “bright-line” economic nexus standard also apply to the Net Profits Tax?**

The Net Profits Tax (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.