

The City that Loves You Back: Philadelphia Business Taxes for Non-Residents.

The City of Philadelphia has some significant business taxes. If you are based there you learn fairly quickly about the Business Income and Receipts Tax (BIRT) (formerly known as the Business Privilege Tax) and the Net Profits Tax (NPT).

What is less well-known is that the City's taxes apply to non-residents who conduct a limited amount of business there.

The City has adopted regulations that make its business taxes applicable in as broad a context as possible. The BIRT is applicable to any taxpayer with sufficient contact with the City to satisfy the U.S. Constitution, and NPT applies to any taxpayer with taxpayer with sufficient contact with the City to satisfy the U.S. Constitution and Public Law 86-272, which sets a solicitation plus standard for sales of tangible personal property.

The City's regulations then go beyond to offer some specific guidelines. First, a non-resident business will be subject to tax if it "regularly and systematically conducts business activity in Philadelphia through employees, agents, independent contractors, brokers or others acting on its behalf . . ." Bus. Priv. Tax Regs § 103(B)(1). The regulations then define what constitutes "regular and systematic business activity."

First, the regulations provide that a taxpayer is engaged in regular and systematic business activity if there are ten or more days of business activity in Philadelphia on an annual basis. Bus. Priv. Tax Regs § 103(B)(1)(a). Next they provide for a rebuttable presumption; the taxpayer is presumed to be engaged in regular and systematic business activity if it conducts between three to ten days of specified business activity. Bus. Priv. Tax Regs § 103(B)(1)(b).

The types of activity that are relevant include soliciting sales, providing repairs or maintenance, collecting accounts "through assignment or otherwise," providing training, providing technical assistance to customers, dealing with customer complaints relating to sales, providing consulting services relating to sales; and having goods delivered in the taxpayer's vehicles or those of a related party. Bus. Priv. Tax Regs § 103(B)(1)(b).

Certain other activities are treated differently. If a taxpayer is meeting with suppliers in the city, meeting representatives of the city, attending occasional meetings such as board meetings, conducting recruiting events or attending trade shows, the taxpayer is presumed not to be subject to tax if it was in the city for less than ten days. Bus. Priv. Tax Regs § 103(B)(2). And even if the taxpayer engages in these activities for ten or more days, the taxpayer is not necessarily subject to tax.

Non-resident business owners should know that Philadelphia is very active in enforcing its business taxes. It has hired an outside collection firm that contacts non-residents. Frequently, non-resident businesses are sued in code enforcement proceedings that carry the threat of substantial fines.

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