

January 17, 2019

Proposed Economic Presence Standards for Philadelphia's Business Income and Receipts Tax

[SCHNEIDER DOWNS, STATE AND LOCAL TAX, TAX](#)

BY [JACK STEWART](#)

The City of Philadelphia has drafted proposed economic nexus standards for Business Income and Receipts Tax ("BIRT") based upon the recent United States Supreme Court ruling in *South Dakota v. Wayfair*.

The proposed economic presence standards are effective for tax years beginning January 1, 2019 and thereafter. According to the proposed regulation, having an economic presence in the city is sufficient to constitute doing business in the city.

Economic Presence means substantial business presence evidenced by the purposeful direction of business toward the City of Philadelphia examined in light of frequency, quantity, and systematic nature of a business organization's economic contacts with Philadelphia. Economic Presence may occur even if a business does not have a physical presence in Philadelphia. Substantial business presence includes, but not limited to, a group of activities performed by a business organization for the purpose of earning income or profit from such activities and includes every operation which forms a part of, or step in, the process of earning income or profit from such group activities. Economic presence in Philadelphia may exist when a business sells tangible personal property, specified digital products, or services to be delivered electronically or physically to a location within Philadelphia, even if the business has no physical presence in Philadelphia. Economic presence is a lower standard than active presence.

Under the Economic Presence standard, a business with no physical presence in Philadelphia is considered to have nexus in Philadelphia and is subject to BRIT if it:

1. Has Economic Presence, as stated above, in Philadelphia; and
2. Has generated at least \$100,000 in Philadelphia gross receipts during any 12-month period ending in the current tax year.

The draft goes on to say that nexus created under the Economic Presence standard depends upon the facts and circumstances of the taxpayer's activities in the City of Philadelphia. Performing one or more of the following activities without conducting any other activities will not necessarily create nexus:

- a. Meeting with supplier of goods and services in Philadelphia;
- b. Meeting in Philadelphia with government representative in the official capacity;
- c. Attending occasional meetings in Philadelphia (such as Board meetings, general internal corporate policy meetings and training, retreats, seminars and conferences sponsored by other, etc.);
- d. Holding recruiting or hiring events in Philadelphia; or
- e. Attending and/or participating at a trade show in Philadelphia at which orders for goods are taken and no sales are made.

Public Law 86-272 protection applies to sellers whose activities are strictly limited to solicitation and activities ancillary to solicitation whose orders for tangible personal property are approved and fulfilled by shipment or delivery outside Philadelphia. These sellers will not be subject to the Net Income portion of the BRIT.

If you have any questions regarding the proposed Economic Presence standards for the BRIT, please contact your state and local tax professional.

You've heard our thoughts... We'd like to hear yours

The Schneider Downs Our Thoughts On blog exists to create a dialogue on issues that are important to organizations and individuals. While we enjoy sharing our ideas and insights, we're especially interested in what you may have to say. If you have a question or a comment about this article – or any article from the Our Thoughts On blog – we hope you'll share it with us. After all, a dialogue is an exchange of ideas, and we'd like to hear from you. Email us at contactSD@schneiderdowns.com.

Material discussed is meant for informational purposes only, and it is not to be construed as investment, tax, or legal advice. Please note that individual situations can vary. Therefore, this information should be relied upon when coordinated with individual professional advice.

© 2019 Schneider Downs. All rights-reserved. All content on this site is property of Schneider Downs unless otherwise noted and should not be used without [written permission](#).