

Tax Insights | February 16, 2022
**Tracking Tax News You
Need to Know**



Treasury Letter Clarifies Crypto Reporting Requirements

The U.S. Treasury Department indicated that it plans to exclude crypto miners, stakers and those who sell hardware and software for crypto wallets from rules that would require digital-asset brokers to report information on their clients' transactions to the IRS. In a recent [letter](#) to six senators, Treasury Assistant Secretary for Legislative Affairs Jonathan Davidson said the Treasury Department's view is that "ancillary parties who cannot get access to information that is useful to the IRS are not intended to be captured by the reporting requirements for brokers." Exclusion from the broker tag is important because a person deemed a broker would be required to collect and disclose detailed information on customers, including names and addresses, gross proceeds from sales and any capital gains or losses. Industry groups have asserted that certain parties, such as miners and stakers, do not have access to that kind of information, making compliance difficult, if not impossible. The Infrastructure Investment and Jobs Act (P.L. 117-58) (see our coverage [here](#)) amended the definition of broker under Section 6045(c)(1)(C) to read, "Any person who (for consideration) regularly acts as a middleman with respect to property." Section references are to the Internal Revenue Code of 1986, as amended (the "Code"). Subparagraph (D) also was added to the definition of broker, reading, "Any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person." As a result of the statutory language, many in the industry have been concerned about the scope of the definition.

IRS's LB&I Division Adds Partnership Compliance Campaign

The IRS announced that its Large Business and International (LB&I) division has added a [compliance campaign](#) affecting partnerships to the division's active campaign list. The compliance campaign is directed at partnership losses that exceed a partner's basis, wherein partners are deducting pass-through losses that should be suspended because they exceed the partner's outside basis in the partner's partnership interest. Under the Code, partners that report flow-through losses from partnerships must have adequate outside basis in their partnership interest (as determined pursuant to Section 705) to deduct the losses. If they do not have adequate outside basis, the losses are suspended under Section 704(d) to the extent they exceed the partner's basis in their partnership interest.

Pennsylvania Governor Budget Address Proposes Reduction in Corporate Tax Rate

On Feb. 8, 2022, Pennsylvania Governor Tom Wolf delivered his 2022 budget address and announced his [budget](#) proposal for the 2022-2023 fiscal year in which he proposed no new tax increases. Instead, the governor proposed reducing the corporate net income tax from the current 9.99% rate to the following: 7.99% beginning Jan. 1, 2023; 6.99% in tax year 2026; 5.99% in tax year 2027 and ultimately to 4.99%. In addition, the governor proposed modernizing the corporate net income tax base by strengthening current addback requirements, codifying economic nexus rules and adopting market sourcing for intangibles.

Philadelphia DOR Issues FAQs on BIRT and NPT Expiration of Temporary Nexus Waiver

The Philadelphia Department of Revenue has provided answers to a list of [frequently asked questions \(FAQs\) regarding the expiration of the Department's temporary nexus waiver for the business income and receipts tax \(BIRT\)](#) and net profits tax (NPT).

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Until June 30, 2021, Philadelphia temporarily waived the legal nexus threshold, which considers the presence of employees working temporarily from home within Philadelphia as establishing sufficient nexus for out-of-Philadelphia businesses. This waiver applied solely as a result of the COVID-19 pandemic. The Department noted that 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 of Philadelphia that has established a “remote workforce” in Philadelphia after June 30, 2021, will have nexus in 2021 based on the activities of the remote worker. The determination of what constitutes a “remote workforce” in Philadelphia is based on facts and circumstances such as official company policies regarding remote work arrangements and the nature and regularity of business activity in Philadelphia. With respect to nexus for the NPT, the determination of whether an entity is doing business in Philadelphia for NPT is a factual analysis to be made on a case-by-case basis.



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