



Nexus for Corporation Business Tax

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Tax: Corporation Business Tax

This Technical Bulletin provides general guidelines for determining whether the activities of a corporation create nexus with New Jersey for the purposes of imposing the Corporation Business Tax.

CORPORATION BUSINESS TAX NEXUS

The New Jersey Corporation Business Tax Act requires every domestic or nonresident corporation to pay an annual franchise tax for the following privileges:

1. Having or exercising its corporate franchise in this State;
2. Deriving receipts from sources within this State;
3. Engaging in contacts within this State;
4. Doing business, having employees, owning capital or property, or maintaining an office in this State.

A foreign corporation has a corporate franchise in this State if:

1. It has registered with the New Jersey Department of Revenue and Enterprise Services; and/or
2. Holds a certificate, license, or other authorization issued by any other State department or agency authorizing the company to engage in corporate activity in this State.

In determining whether a corporation is doing business in New Jersey, consideration is given to such factors as:

1. The nature and extent of the activities of the corporation in New Jersey;
2. The location of its offices and other places of business;
3. The continuity, frequency, and regularity of the activities of the corporation in New Jersey;
4. The employment in New Jersey of agents, officers, and employees;
5. The location of the actual seat of management or control of the corporation.

Public Law 86-272. The Federal Interstate Income Act, Title 15 U.S.C.A. Section 381, "Public Law 86-272," prohibits a state from imposing a net income based tax on income of a foreign corporation earned within its borders from interstate commerce, if the corporation's only business activity within the state consists of the solicitation of orders by the corporation or its representatives of tangible personal property, the orders are sent outside the state for approval and, if approved, are filled by shipment or delivery from a point outside the state.

A foreign corporation that conducts business activity in New Jersey that exceeds the protection of Public Law 86-272 is subject to the Corporation Business Tax as measured by the net income of the corporation. Even though a corporation's activities may be protected by Public Law 86-272, if it is registered or otherwise has nexus in New Jersey, it is subject to the Corporation Business Tax minimum tax and must file a Corporation Business Tax return.

In-State activities by a corporation that create nexus for Corporation Business Tax purposes and which are outside the protection of Public Law 86-272 include, but are not limited to:

1. Repairs, maintenance, and installations;
2. Collection or repossession activities;
3. Credit investigations;
4. Conducting training courses, seminars, or lectures for personnel (other than for personnel involved only in solicitation);
5. Providing technical assistance;
6. Resolving customer complaints for a purpose other than to ingratiate sales personnel with the customer;
7. Approving or accepting orders or securing deposits on sales;
8. Acquiring personnel for purposes other than solicitation activities;
9. Maintaining a display at a single location within New Jersey in excess of two weeks during the tax year;
10. Carrying samples for sale, exchange, or distribution in any manner for consideration or other value;
11. Picking up or replacing damaged or returned property;
12. Owning, leasing, or maintaining in-State facilities such as a warehouse or telephone answering service;
13. Consigning tangible personal property.

Further Information

Information about the Corporation Business Tax is available on the Division of Taxation website at <http://www.state.nj.us/treasury/taxation/corp.shtml>

Note: A Technical Bulletin is an informational document designed to provide guidance on a topic of interest to taxpayers and describe changes to the law, regulations, or Division policies. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the tax law or its interpretation may affect the accuracy of a Technical Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.