

Metro Business Income Tax Administrative Rule 7.07 – 1080

7.07 – 1080 Business Activity and Apportionment of Sales of Tangible Personal Property

For business income tax purposes, a person must have taxable nexus outside the Metro district in order to apportion sales of tangible personal property. If a person does not have taxable nexus outside the Metro district, no apportionment of income is allowed.

Taxable nexus is the connection between a person and a taxing jurisdiction sufficient to allow the jurisdiction to impose a tax based on or measured by net income. For sales of tangible personal property, taxable nexus is generally created by physical presence (through employees and/or property). Owning or renting real or personal property, or having employees outside the Metro district generally creates taxable nexus outside the Metro district. Solicitation of sales and delivery/shipment of sales to locations outside of the Metro district are generally not sufficient business activity to create taxable nexus outside the Metro district unless they extend beyond the protections afforded by PL 86-272. Once taxable nexus is created both inside and outside the Metro district, only sales delivered or shipped to customers in the Metro district are apportioned to the Metro district.

“Delivered or shipped to” may not be defined as activities of the purchaser of tangible personal property. If the purchaser takes physical title by picking up the tangible personal property or directing the pick up of tangible personal property (i.e., will-call or other such pick up by the purchaser or purchaser’s agent), the property is considered “delivered” at the point of pick up. Any further sale or delivery on the part of the purchaser to any secondary purchaser shall not be considered as delivery from the original seller to such secondary purchaser.

Example 1:

XYZ Laboratory manufactures over-the-counter medicine at its only facility, located in the Metro district. Sales are almost entirely within the Metro district except for a long standing order from a large retail drugstore located outside of the Metro district. XYZ has one salesperson who routinely visits this customer and solicits sales. XYZ delivers its product to this customer by common carrier and in its company truck driven by a company employee.

The solicitation of sales and the delivery of sales outside the Metro district do NOT create taxable nexus for XYZ Laboratory outside of the Metro district. All of XYZ’s income is taxable to the Metro district.

If the company’s delivery employee (i.e. truck driver) or salesperson collects payments, takes orders, stocks shelves, or does any other type of routine and ongoing service in addition to delivery and solicitation of sales at the site of the customer, the employee creates taxable nexus for XYZ Laboratory in the jurisdiction of the drugstore. XYZ Laboratory may apportion its income between the City and the outside jurisdiction.

If XYZ Laboratory opens a sales office or manufacturing facility outside of the City, it creates taxable nexus outside of the City, and XYZ Laboratory may apportion its income between the Metro district and the outside jurisdiction.

Example 2:

ABC Suppliers is a distributor located outside the Metro district. ABC takes mail and phone orders from its customers and delivers those orders to its Metro district customers using common carrier and ABC's own company trucks driven by company employees. Two ABC salespersons regularly visit Metro district locations to maintain and establish a Metro district customer base.

The solicitation of sales and the delivery of sales do NOT create taxable nexus in the Metro district for ABC Suppliers. ABC Suppliers is not required to pay Business Income Tax.

If ABC delivery employees (i.e. truck drivers) or salespersons collect payments, take orders, stock shelves, or do any other type of routine and ongoing service in addition to delivery and sales calls at the Metro district locations, the employees create taxable nexus for ABC Suppliers. ABC must apportion part of its income to the Metro district.

If ABC Suppliers opens a warehouse in the Metro district, ABC creates taxable nexus in the Metro district. ABC must apportion part of its income to the Metro district.

Example 3:

Superior Clothing began as a mail order specialty clothing business whose only operations were a warehouse and office located in the Metro district. Superior shipped all orders by a freight carrier or the US mail from the Metro district location to its customers nationwide. Superior had no business activity outside the Metro district and did not apportion its net income. It reported 100% of its income as taxable to the Metro district.

In January of a following year, Superior opens a retail outlet outside the Metro district. This outlet creates taxable nexus outside the Metro district for Superior. With taxable nexus established outside the Metro district, Superior may begin apportioning its income. Only sales of tangible personal property shipped to or delivered within the Metro district will be included in the numerator of the apportionment factor for Metro district. Once taxable nexus is created outside the Metro district, all sales of tangible personal property may be apportioned to the point of delivery regardless of method of delivery.

Example 4: Premium Pipelines, Inc. is located within Metro district where it sells and stores bulk gasoline. Premium Pipelines, Inc. does not deliver gasoline nor does it contract with others to deliver gasoline, instead it relies on purchasers to pick up the gasoline. Paramount Petroleum, Inc. purchases bulk gasoline from Premium Pipelines, Inc. Paramount Petroleum, Inc. then contracts with M&M Gasoline Delivery Services to pick up the gasoline and deliver the gasoline to several locations as directed by Paramount Petroleum, Inc.

The gross income of such gasoline sales by Premium Pipelines, Inc. is gross income within the Metro district because the purchaser has taken title within the Metro district and all delivery activity is directed and controlled by the purchaser. In such case, Premium Pipelines, Inc. has transferred title and control beyond mere FOB or other conditions of sale.

Note: This rule sunsets 12/31/2022 and does not apply to tax years beginning on or after 1/1/2023.

XX-XX-2023

Date

Amended XX-XX-2023

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