

§ 121.104

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§ 121.104 How does SBA calculate annual receipts?

(a) *Receipts* means all revenue in whatever form received or accrued from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. Generally, receipts are considered “total income” (or in the case of a sole proprietorship “gross income”) plus “cost of goods sold” as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms (such as Form 1120 for corporations; Form 1120S for S corporations; Form 1120, Form 1065 or Form 1040 for LLCs; Form 1065 for partnerships; Form 1040, Schedule F for farms; Form 1040, Schedule C for other sole proprietorships). Receipts do not include net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees; proceeds from transactions between a concern and its domestic or foreign affiliates; and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker. For size determination purposes, the only exclusions from receipts are those specifically provided for in this paragraph. All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer’s request, investment income, and employee-based costs such as payroll taxes, may not be excluded from receipts.

(1) The Federal income tax return and any amendments filed with the IRS on or before the date of self-certification must be used to determine the size status of a concern. SBA will not use tax returns or amendments filed with the IRS after the initiation of a size determination.

(2) When a concern has not filed a Federal income tax return with the IRS for a fiscal year which must be included in the period of measurement,

SBA will calculate the concern’s annual receipts for that year using any other available information, such as the concern’s regular books of account, audited financial statements, or information contained in an affidavit by a person with personal knowledge of the facts.

(b) *Completed fiscal year* means a taxable year including any short year. “Taxable year” and “short year” have the meanings attributed to them by the IRS.

(c) *Period of measurement.* (1) Except for the Business Loan, Disaster Loan, Surety Bond Guarantee, and Small Business Investment Company (SBIC) Programs, annual receipts of a concern that has been in business for 5 or more completed fiscal years means the total receipts of the concern over its most recently completed 5 fiscal years divided by 5.

(2) Except for the Business Loan, Disaster Loan Programs, Surety Bond Guarantee, and SBIC Programs, annual receipts of a concern which has been in business for less than 5 complete fiscal years means the total receipts for the period the concern has been in business divided by the number of weeks in business, multiplied by 52.

(3) Except for the Business Loan, Disaster Loan, Surety Bond Guarantee, and SBIC Programs, where a concern has been in business 5 or more complete fiscal years but has a short year as one of the years within its period of measurement, annual receipts means the total receipts for the short year and the 4 full fiscal years divided by the total number of weeks in the short year and the 4 full fiscal years, multiplied by 52.

(4) For the Business Loan, Disaster Loan, Surety Bond Guarantee, and SBIC Programs, a concern that has been in business for three or more completed fiscal years may elect to calculate annual receipts using either the total receipts of the concern over its most recently completed 5 fiscal years divided by 5, or the total receipts of the concern over its most recently completed 3 fiscal years divided by 3. Annual receipts of a concern which has been in business for less than three complete fiscal years means the total receipts for the period the concern has

been in business divided by the number of weeks in business, multiplied by 52. Where a concern has been in business three or more complete fiscal years but has a short year as one of the years within its period of measurement, annual receipts means the total receipts for the short year and the two full fiscal years divided by the total number of weeks in the short year and the two full fiscal years, multiplied by 52. For the purposes of this subsection, the Business Loan Programs consist of the 7(a) Loan Program, the Microloan Program, the Intermediary Lending Pilot Program, and the Development Company Loan Program (“504 Loan Program”). The Disaster Loan Programs consist of Economic Injury Disaster Loans, Military Reservist Economic Injury Disaster Loans, and Immediate Disaster Assistance Program loans.

(d) *Annual receipts of affiliates.* (1) The average annual receipts size of a business concern with affiliates is calculated by adding the average annual receipts of the business concern with the average annual receipts of each affiliate.

(2) If a concern has acquired an affiliate or been acquired as an affiliate during the applicable period of measurement or before the date on which it self-certified as small, the annual receipts used in determining size status includes the receipts of the acquired or acquiring concern. This aggregation applies for the entire period of measurement, not just the period after the affiliation arose. However, if a concern has acquired a segregable division of another business concern during the applicable period of measurement or before the date on which it self-certified as small, the annual receipts used in determining size status do not include the receipts of the acquired division prior to the acquisition.

(3) Except for the Business Loan and Disaster Loan Programs, if the business concern or an affiliate has been in business for a period of less than 5 years, the receipts for the fiscal year with less than a 12-month period are annualized in accordance with paragraph (c)(2) of this section. Receipts are determined for the concern and its affiliates in accordance with paragraph (c) of this section even though this

may result in using a different period of measurement to calculate an affiliate’s annual receipts.

(4) The annual receipts of a former affiliate are not included if affiliation ceased before the date used for determining size. This exclusion of annual receipts of such former affiliate applies during the entire period of measurement, rather than only for the period after which affiliation ceased. However, if a concern has sold a segregable division to another business concern during the applicable period of measurement or before the date on which it self-certified as small, the annual receipts used in determining size status will continue to include the receipts of the division that was sold.

(e) Unless otherwise defined in this section, all terms shall have the meaning attributed to them by the IRS.

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§ 121.105 How does SBA define “business concern or concern”?

(a)(1) Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.

(2) A small agricultural cooperative is an association (corporate or otherwise) acting pursuant to the provisions of the Agricultural Marketing Act (12 U.S.C.A. 1141j) whose size does not exceed the size standard established by SBA for other similar agricultural small business concerns. A small agricultural cooperative’s member shareholders are not considered to be affiliates of the cooperative by virtue of their membership in the cooperative. However, a business concern or cooperative that does not qualify as small under this part may not be a member of a small agricultural cooperative.