TAXES AND TRUCKS

UNINCORPORATED TRUCKERS BEWARE

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There seems to be an opinion that an unincorporated trucking firm escapes multi-state taxation. This is not true. Trucking firms operating as proprietorships, partnerships, Limited Liability Partnerships (LLPs), and Limited Liability Companies (LLCs) are subject to taxation under requirements similar to those imposed on corporations.

A state cannot impose an income tax on any business entity, regardless of form, unless that company has sufficient nexus with the state (Opinion, September 12, 2005). Every state has its own nexus standard. For transportation companies, these standards are generally based on miles and/or pickups and deliveries within the state. A state's nexus standard applies to all entities without regard to legal form. When determining if your company has nexus with a state, the nexus standard is considered at the entity level. Once an entity has nexus with a state, each owner or partner has nexus with that state.

The owner of a proprietorship and each partner in a partnership or Limited Liability Partnership (LLP) is required to file income tax returns in each state that the entity has nexus. At the time of its formation, a Limited Liability Company (LLC) can elect to be taxed as either a corporation or a partnership for federal tax purposes. If the LLC elects corporate tax status, it must file corporate tax returns in every state in which it is determined to have nexus. If an LLC elects to be taxed as a partnership, or is a single-member LLC, each partner or owner is required to file income tax returns in each state that the LLC has nexus.

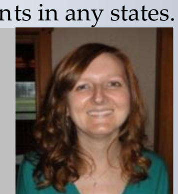
For federal income tax reporting purposes, the total business income is reported on Schedule C of the owner's personal tax return. A majority of the states use an apportionment method that is based on miles to allocate net business income being reported on Schedule C to each of the states in which the business has nexus. Exceptions to this method do exist. New York, for instance, does not allow residents to apportion their net income. Owners or partners residing in New York must file a personal tax return that reports 100% of their business net income as taxable in New York. New York then allows the resident to claim a credit against the New York tax for taxes paid to other states that are based on the same income. The credit that New York residents can claim is subject to certain limitations and, therefore, the actual credit allowed on the New York return may be less than the total taxes paid to other states. This is similar to the creditable tax amounts derived from international taxation.

The income tax filing requirements for proprietors, partners and other unincorporated entities vary in every state. Michigan and Ohio, for example, require the unincorporated owner to report his apportioned business income on a business tax return, while New Jersey and New York require the owner to report the apportioned business income on a personal tax return. Pennsylvania requires the unincorporated owner to file a personal tax return as well as completing the foreign franchise tax section on the business tax return. The lesson to be learned is that once a business determines it has met the nexus standard in a specific state, the filing requirements in that state need to be carefully reviewed to ensure that the proper returns are prepared and filed.

If, after careful review of the company's activities, it is discovered that nexus has been established in certain states and the required tax returns have never been filed, it may be possible for the company to participate in a voluntary disclosure program in those states, if offered (Opinion, November 21, 2005). The benefits of participating in a voluntary disclosure program can include a limited look-back period for filing returns and a reduction in the amount of interest and penalties assessed on the overdue returns.

Time can be of the essence when filing for voluntary disclosure. In the past, New Jersey has stopped trucks and impounded the vehicle and cargo until arrangements have been made to bring the New Jersey tax filings up to date. Once a truck has been stopped or your company has been contacted by a state's tax department, the company is considered "discovered". "Discovered" companies are not eligible to participate in most voluntary disclosure programs and, therefore, will lose the benefits of the limited look-back period and reduced interest and penalties.

Our experience shows that many unincorporated entities are unaware of their state filing requirements. If you are an owner or a partner in an unincorporated entity, please review your activities or contact your accountant to determine if you meet the nexus requirements in any states.



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