

TAXES AND TRUCKS

Tax Liability Disclosure Beats 'Discovery'

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Many trucking companies are not aware they are required to file corporate income tax returns in every state in which they meet certain conditions. Unless they take action quickly, overlooking these requirements could result in severe penalties and fines.

The most recent state to begin aggressively enforcing the filing of corporate business tax returns is New Jersey (Opinion, 9-12, p. 9). Officials have been stopping trucks on New Jersey roads to verify that the companies are registered for, and paying, the New Jersey corporate business tax. If they are not paying the tax, they are fined. But New Jersey is by no means alone in enforcing the corporate business tax for transportation companies. Most states have similar tax laws, but the five my company has found to be most aggressive in their actions are Michigan, New Jersey, New York, Ohio and Pennsylvania.

Not every trucking company is required to pay this tax. It all depends on whether or not it has “nexus” with the state — that is, a definite link or minimum connection between the taxpayer and the taxing state. The states use various methods for determining if a company meets its nexus standard and is, therefore, liable for state income tax. For example, some glean the needed information from International Fuel Tax Agreement reports.

By whatever means the nexus is arrived upon, when a state informs a carrier it has been found liable for state income taxes, the company is considered to have been “discovered.” That is bad news for the company, because being discovered means it must file tax returns for *every* year in which it had nexus with the state and then pay taxes, interest and penalties for every one of those years.

However, prior to official “discovery” by a state, a company that realizes it has potential tax liabilities with that state can resolve them ahead of time by participating in the voluntary disclosure programs most states run, although admittedly not all. The rules for voluntary disclosure programs vary according to the state. The benefits include a limited “look-back” period and a waiver of most penalties.

The look-back periods for voluntary disclosure programs are usually limited to three to six years. The states are then precluded from assessing the participant’s tax, penalties or interest for the years prior to the look-back period they would have had to pay for had they waited for discovery.

Many states will even waive all penalties, including those for late filing or late payments. Others will waive most penalties, but still impose a minimal penalty. New Jersey, for example, has a 5% unabateable penalty a taxpayer must pay even if it participates in the state’s voluntary disclosure program.

Remember, though, that to participate in a state’s voluntary disclosure program, a company must apply before being “discovered” by that state. The voluntary disclosure process usually involves a simple application or written request. A committee then reviews the application and must grant approval before the applicant is accepted into the program.

Of those five states we have found to be most aggressive about enforcing the corporate income tax for out-of-state trucking companies, only New York does not currently have a voluntary disclosure program.

Here are specifics on the four other “aggressive” states:

- Michigan’s voluntary disclosure program requires participants to file Single Business Tax returns for the four most recently completed years, but may further limit that look-back period to three years. Once the terms of the program are satisfied, which includes filing returns and paying the taxes and interest, all penalties will be waived.
- New Jersey requires participants to file corporate business tax returns for the current year plus three prior years. The participant must also agree to continue filing returns for a five-year period regardless of nexus. New Jersey’s current minimum tax is \$500. If the returns are filed, and the tax and interest are paid, New Jersey will not assess any late filing, late payment, civil or criminal penalties. As I mentioned before, however, that 5% unabateable penalty will still be imposed.
- Participants in Ohio’s voluntary disclosure program are required to file franchise tax reports for the current year plus three prior years. Ohio will waive all penalties associated with the four years covered by the agreement, and all prior years. The participant waives its right to refund for the three prior years. Ohio currently has a minimum tax of either \$50 or \$1,000, depending on the amount of worldwide gross receipts and number of worldwide employees.
- Pennsylvania’s voluntary disclosure program limits responsibility for filing and paying corporate taxes and interest to five years plus the current year. Penalties will be stricken when all requirements have been met.

We strongly encourage you to review your records or contact your tax preparer to determine if you are liable for any state taxes and to determine your eligibility for the various states’ voluntary disclosure programs. Our experience with the various states’ voluntary disclosure programs — as well as states that have “discovered” companies, including New Jersey and Pennsylvania — has shown that voluntary disclosure programs are an effective means for resolving potential tax liabilities.

