

# TAXES AND TRUCKS

## *State Nexus Concerns for Truck Transportation Companies*

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We have received a number of telephone calls recently regarding the State of New Jersey's business tax enforcement action in the truck transportation industry. In recent months, New Jersey has been stopping trucks as they travel in the state and inquiring from the driver the extent of activities in the state. The driver is generally asked how long the entity has been traveling through or within New Jersey and whether the trips to New Jersey include any pickups or deliveries of goods within the state. By inquiring about these activities, the state official is attempting to determine whether the transportation company has a connection, or "nexus", with New Jersey for business tax purposes. If the volume of inquiries that we have received is any indication of the lack of awareness of state nexus and tax rules in the transportation industry, then a refresher course on these rules is definitely in order.

While every state has the right to tax any entity doing business within the state, the states are somewhat restricted by federal constitutional limitations on whom they may tax. The Commerce Clause prohibits any state from unduly burdening interstate commerce. For example, it is the Commerce Clause that prohibits one state from imposing a customs clearing tax, or duty, on goods that enter that state from another state. The Due Process Clause requires that there be a definite link or minimum connection between the in-state activities of the entity and the taxing state in order for the state to impose its tax on the entity. This minimum connection is often referred to as "nexus."

Each state is able to set its own nexus standards under the amendments to the United States Constitution. The nexus standards usually relate to the amount or relative importance of the taxpayer's activities within the state. They generally involve activities such as attending trade shows within the state, approving orders within the state, and delivering goods in company-owned vehicles within the state. However, by no means is this a complete list of the in-state activities that a taxing state may consider in its determination of a taxpayer's nexus. Each and every activity by the taxpayer in the taxing state must be carefully reviewed and considered in order to determine whether nexus exists and if the entity is subject to the state's taxation regulations.

Most states set separate nexus standards for truck transportation companies. These standards are usually based on the number of miles the entity travels within the state and/or the number of pickups and deliveries occurring within the state during the entity's taxable year. The number of miles and/or pickups and deliveries necessary to establish nexus with a particular state can vary greatly. For instance, it takes only one mile and one pickup or delivery to establish nexus with the states of New Jersey and Michigan in any given taxable year. New York requires only two pickups or deliveries. Pennsylvania requires 50,000 miles and one trip with pickup or delivery OR in-state mileage equal to five percent (5%) of total mileage and twelve trips with pickups or deliveries.

In addition to the separate truck transportation nexus standards, an entity should also be aware that having a location, such as an office or terminal, an employee or agent, or having any business activity other than truck transportation within a state may subject the entity to that state's taxes even if the mileage and/or pickup and delivery nexus standards have not been met.

Creating even further confusion, each state can change its nexus standards at any time. We have found that the best way to keep abreast of the nexus standards, and any subsequent changes, is to begin by contacting each state's tax department directly and compiling a list of the current nexus standards by state. Once this list is compiled, it is then necessary to update this list continually for any changes. We have found that changes to nexus standards are generally published in trade periodicals at some point; however, the change may not be published as quickly as it becomes effective. Generally, the best source of information on changes made to any state's tax regulations is the entity's accounting and/or tax preparation firm. It is a tax preparer's responsibility to ensure that he or she remains up-to-date on changes that affect any industry in which his or her clients operate. As part of our client service, our firm provides our clients with a current list of truck transportation nexus standards by state and updates by fax or email as soon as we are made aware of any change in the state tax nexus standards or tax regulations that may affect their business.

