PAY As You Play

There's no stopping the long arm of the tax collector. Several states may be after a chunk of your earnings too. **by Duff McCutcheon**

Word has it that there's more to fear in the Garden State than zealous state troopers and DOT officers – there are apparently state tax collectors to worry about as well. Reports out of New Jersey recently have agents of the state's treasury department ambushing unsuspecting owner-operators – cornering them at weigh stations, and even loading docks, demanding to see up-to-date New Jersey corporate business tax filings.

If you're just passing through, or if you're making pick-ups and drops in the state under someone else's authority (as when contracting your truck to a motor carrier), then there's nothing to worry about. If you're passing through, that's not considered doing business in the state. And if you're hauling for someone else, it's their problem, not yours.

But if you're operating under your own authority and you make even one pick-up or drop a year in New Jersey? You're doing business in the state and are subject to their corporate business tax. Minimum payment? $500, and it goes up from there according to how much business you do in the state.

"Your tax liability is based on a formula that takes into account a number of things including the mileage driven in New Jersey, your receipts in the state, your corporation's overall profits, and there's a percentage formula that's worked out accordingly," says Mark Perkiss, a public relations officer with the New Jersey Treasury Department.

If you're late in filing, there's a maximum penalty of 25% of whatever your tax liability is; and there's a late payment penalty of 5% of the amount that's paid late.

If you have a longstanding debt, Perkiss recommends coming in from the cold. "Contact us and we'll go from there," he says, declining to comment on what might be in store for the tardy out-of-state filer.

It's not just New Jersey that has become more aggressive in pursuing corporate tax collections from out-of-state business owners. New York, Pennsylvania, and Michigan are three other nearby states that have aggressive state tax enforcement policies, according to Ontario Trucking Association VP, Steve Laskowski.

Curiously, while every U.S. state has some form of franchise tax or corporate business tax that could conceivably apply to owner-ops doing business in the state, only a handful seem to enforce it. And it's these aforementioned states – and their insistence in collecting taxes – that has had the Ontario Trucking Association and its member carriers concerned enough to take action in the last few years.

At issue is the fact that thanks to a federal income tax treaty between the U.S. and Canada, U.S. firms doing business in this country are not subject to Canadian corporate taxes – unless they have a presence here, like a terminal. The same is true for Canadian companies doing business south of the border – at least on a federal level.

"However, the individual states were not signatories to that treaty, and thus feel that they're not obliged to abide by it," says Laskowski. The OTA has taken legal action against New York, New Jersey, and Michigan in a bid to stop the states from charging the tax, but has succeeded in little more than negotiating back-tax agreements.

For example, the OTA recently took New York State to its supreme court over the issue, and "in the end we decided that the best thing for the membership was to strike a deal. At this point what we've done is negotiate back-tax agreements that minimize and mitigate the back-taxes; and/or modify the formula in some states on a go-forward basis. Therefore it mitigates the actual amount paid (as in the case in Michigan). We advise the carriers that if you take advantage of this deal you're still going to have to pay the tax, but it'll be less tax, and on a go-forward basis," says Laskowski. "It's just the reality of doing business in those jurisdictions.

"To date there have been no issues with other states, or any problems with the four aforementioned states. The industry is now aware of which states there are issues, what those issues are, and we treat it like any other tax at this point."

Scott Taylor, vice president of the TFS Group, a Waterloo, Ont. transportation tax and compliance firm, takes a more cautious view of the topic.

"Everybody is afraid of this," he says. "Franchise taxes are something that no one likes to talk about because lots of people are and aren't filing them in all sorts of places. I've talked to carriers and they've got their own rules – 'if we do so many miles in this state, we'll file; if it's under this, we'll take our chances.' It's one of those dark horse topics."

Taylor says his firm will advise people on their New York, New Jersey, and Pennsylvania filings, because they've had experience in dealing with these jurisdictions, "but this is a huge responsibility for anyone to determine where filing may be required. And then to file properly."

Leave it to the taxman to come up with yet another bugaboo to worry about on top of our own Canadian income taxes, as well as all the other compliance issues to deal with in operating on either side of the border.

"It's a cash grab," says Taylor. "Pure and simple. It's a way for a jurisdiction to increase its tax base without getting on the wrong side of their constituents. They can't lose."

If you've never filed state business taxes before, you may be loath to investigate further to see what you may be subject to stateside – but nor do you want to be caught unawares if a New Jersey tax agent crawls out from behind a dumpster at the loading dock.

Taylor advises owner-ops in contract arrangements with carriers to carry a copy of the contract in the truck to prove the third party relationship to the shipper, and to use the bills of lading, truck registrations, permit filings, etc. to show it's the carrier – not the owner-op personally – that's doing business in that state.

Who, What, and Where?

Here's a list of the states that collect some sort of franchise tax and under what circumstances. We've also listed points of contact if you care to whack that particular hornet's nest.

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NEW JERSEY

Who pays?

Any trucking company that makes pickups or deliveries in New Jersey is considered to be doing business in the state and as a result is subject to the state's corporate business tax and has to file tax returns.

What triggers nexus?

A minimum of one pick-up or drop in New Jersey is considered doing business in the state and thus a company would be subject to the minimum corporate business tax rate of $500 per year.

Go to www.state.nj.us/treasury/taxation for more information and steps on how to file.

PENNSYLVANIA

Who pays?

Any truck company defined as a "corporation" or a "foreign entity" under the state's corporate net income tax and foreign franchise tax legislation.

What triggers nexus?

A truck company is required to file a corporate net income tax or foreign franchise tax report if its activities during the tax year exceed either of the following standards (In the event a taxable year is less than 12 months, the 12-month period ending with the end of the short taxable year shall be considered.): (a) The company travels more than 50,000 loaded miles in Pennsylvania and makes at least one trip with pick-ups or deliveries in Pennsylvania; or (b) The company has a Pennsylvania apportionment fraction of more than 5 percent and has more than 12 trips with pick-ups or deliveries in Pennsylvania.

Go to www.revenue.state.pa.us/ for more information and steps on how to file.

MICHIGAN

Who pays?

Generally speaking, foreign trucking firms that deliver goods to Michigan for various manufacturers or on their own behalf are engaged in business activity within the state and are subject to Michigan's Single Business Tax.

What triggers nexus?

A Canadian trucking firm is required to file a Michigan SBT return to the extent that the firm has business activity and nexus in Michigan and the firm's apportioned gross receipts are greater than or equal to $350,000 for the tax year.

Gross receipts means the sum of sales and rental or lease receipts from all sources worldwide. Gross receipts includes, but is not limited to, gross income derived from transportation services performed worldwide. A foreign person's gross receipts, for purposes of the filing threshold, are the apportioned, adjusted gross receipts. The worldwide gross receipts are apportioned to Michigan by a formula. The apportionment formula is the standard formula for transportation businesses, which is a fraction, the numerator of which is revenue miles traveled in Michigan and the denominator of which is revenue miles traveled everywhere.

In short, if a Canadian trucking firm conducts business activity in Michigan and its worldwide gross receipts apportioned to Michigan equal or exceed $350,000 (US), the firm must file an SBT return.

Go to www.michigan.gov/treasury, click on "business", and then "single business tax" for more information and steps on how to file.

NEW YORK

Who pays?

Any trucking company that makes pickups or deliveries in New York is considered to be doing business in the state and as a result is subject to the state's corporate business tax and has to file tax returns.

What triggers nexus?

A minimum of one pick-up or drop in New York is considered doing business in the state.

Call (800) CALL TAX for more information.