

April 9, 2008

**Corporate Income Tax - Nexus
For-Hire Trucking Companies**

Issue:

Are entities transporting goods for hire over Nebraska roads subject to the Nebraska corporate income tax?

Conclusion:

Trucking companies transporting goods over Nebraska roads are subject to the Nebraska corporate income tax because their services are physically performed in Nebraska. Such services are not protected by Public Law 86-272. However, trucking companies are not required to apportion income to Nebraska if the company's activities within Nebraska do not exceed the de minimis standard outlined below.

Definitions:

"Trucking company" means a motor common carrier, a motor contract carrier, or an express carrier which primarily transports tangible personal property of others by motor vehicle for compensation.

"Mobile property" means all motor vehicles, including trailers and semi-trailers and containers and chassis engaged directly in the movement of tangible personal property.

"Mobile property mile" is the movement of a unit of mobile property a distance of one mile whether loaded or unloaded.

Analysis:

Neb. Rev. Stat. §77-2734.02 provides for the taxation of entities doing business in this state. The phrase "doing business in this state" is defined in Neb. Rev. Stat. §77-2734.04 as conducting activities in Nebraska that exceed the limitations found in 15 U.S.C. §381 (Public Law 86-272). Trucking companies which are physically present in this state and regularly take advantage of Nebraska's roads to produce income are required to become licensed for and pay income tax.

Trucking companies without a business location in Nebraska may frequently transport goods over the roads of this state, which may or may not involve the pick-up or delivery of the goods in Nebraska. Use of roads within this state constitutes a significant benefit to the trucking company. In addition, while a trucking company's mobile property is traveling through this state other benefits such as police and fire protection and rest stops are available for this mobile property.

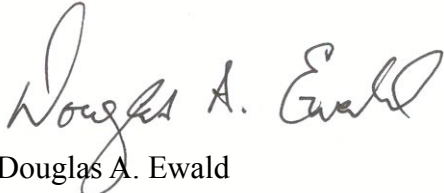
De Minimis Nexus Standard:

A trucking company is not required to apportion income to this state if the company, during the course of the income year, neither:

- (a) Owns nor rents any real or personal property in this state, except mobile property; nor
- (b) Makes any pick-ups or deliveries within this state; nor
- (c) Travels more than 25,000 mobile property miles within this state; provided that the total mobile property miles traveled within this state during the income year does not exceed three percent (3.0%) of the total mobile property miles traveled in all states by the trucking company during that period; nor
- (d) Makes more than 12 trips into this state.

Therefore, a trucking company is required to apportion income to this state when, during the course of the income year, it meets any one or more of the following criteria: the company owns or rents any real or personal property in this state, other than mobile property; makes any pick-ups or deliveries within this state; travels more than 25,000 mobile miles within this state or the total mobile miles within this state exceed three percent (3.0%) of the total mobile miles traveled in all states; or, makes more than 12 trips into this state.

APPROVED:



Douglas A. Ewald
State Tax Commissioner

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