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Memo

Date:	May 12, 2017
To:	Stephen Laskowski, President Ontario Trucking Association
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From:	Jackie Naish, Bruce Todd, Bud Goff
Subject:	Ohio Commercial Activity Tax Considerations for Trucking Companies

This memorandum has been prepared to assist your members in understanding their responsibilities regarding the Ohio Corporate Activity Tax (CAT). The Ohio Department of Taxation has recently won some important court cases that require out-of-state taxpayers to file CAT returns. As a consequence, the Department has become more aggressive with its enforcement—increasing the likelihood that your members will be contacted by Ohio about whether they are filing CAT returns or paying the tax. This memorandum summarizes the most important information your members to understand in order to determine if they may have a filing responsibility.

What Triggers a Filing?

A CAT filing requirement is triggered when a taxpayer has nexus with Ohio as well as $150,000 or more of Ohio-sourced receipts. When both the nexus and the $150,000 receipts threshold are met the taxpayer must register with the Department of Taxation for CAT and commence filing CAT returns.

In general, Ohio relies on certain bright-line tests to determine when a taxpayer has nexus with the state. Ohio law defines nexus to exist whenever a taxpayer uses its capital in Ohio, is registered to do business in Ohio, or when nexus otherwise exists. The bright-line tests simplifies the nexus analysis; if a bright-line threshold is exceeded, the taxpayer is presumed to have nexus. There are several bright-line tests but the most important to transportation companies may be the $50,000 of property test.

A transportation company is presumed to have nexus in Ohio when it has property with an aggregate value of $50,000 within the state for 13 days during a year. The 13 days do not need to be consecutive. Furthermore, the presence of a truck for only a fraction of a day is sufficient to count as one day. Thus, for example a portion of a day used to drive through the state in a $100,000 truck would count as having property in the state for one of those 13 days. Nevertheless, even if the 13 day limit is exceeded, a transportation company must also have at least $150,000 of Ohio-source receipts before it is required to register for the CAT.

The other Ohio bright-line tests include: Ohio payroll of at least $50,000; Ohio-source receipts of $500,000; and whenever 25% or more of a taxpayer's of total property, payroll, or receipts are in Ohio. Each of these tests is applied on a calendar year basis. A taxpayer is also considered to have nexus when it is domiciled in Ohio.

What are Ohio-source receipts?

Ohio-source receipts are broadly defined and include receipts from the performance of a service within Ohio. Transportation companies are required to follow a specific procedure to determine their Ohio-source receipts. Total mileage within Ohio during a tax period is divided by total mileage everywhere during the same period. This fraction is multiplied by the transportation company's top-line gross receipts from transportation services everywhere. The resulting product are the transportation company's Ohio-source receipts. Although not explicit in the law, your clients could consider revenue miles over total revenue miles in the application of this formula rather than all miles of any variety to provide a reasonable surrogate.

In addition to receipts sourced to Ohio under the transportation method described above, taxable receipts can also include, among other things: gross rents from the use of property within Ohio; proceeds from the sale of property when the customer received the property in Ohio; and most services where the benefit of the service is received within Ohio (e.g. logistics services).

In summary, this could mean that mere drive-through miles could generate Ohio sourced receipts. Not just those where you have a pick up or delivery in the state.

What is the tax rate?

There are two components to the CAT: an annual minimum tax and an additional tax determined by applying a rate of 0.26% rate to gross receipts in excess of $1 million. The annual minimum tax is prescribed by the state based on the level of a taxpayer's gross receipts.

Taxable Gross Receipts	*Annual Minimum Tax*	*CAT*
$1 million or less	$150	No additional tax
Over $1 million, up to $2 million	$800	0.26% x Taxable Ohio receipts over $1 million
Over $2 million, up to $4 million	$2,100	0.26% x Taxable Ohio receipts over $1 million
More than $4 million	$2,600	0.26% x Taxable Ohio receipts over $1 million

Please note that if a taxpayer has Ohio-source receipts during the year of less than $150,000 are not required to register for the CAT and do not pay any tax.

For quarterly filers, the $1 million exclusion is applied entirely to the first quarter. Any additional exclusion remaining is carried forward to the second quarter, and so on until the exclusion is exhausted.

What are the filing requirements?

A taxpayer must first file to register for CAT with the Department of Taxation. Once a taxpayer has nexus with Ohio and Ohio-source receipts of $150,000 or more, a CAT 1 registration form should be filed within 30 days. This form is paper-filed and mailed to the Department. The penalty for a late registration is $100 per month up to $1,000.

Taxpayers file CAT returns annually or quarterly depending on their level of gross receipts. Those taxpayers with annual Ohio-source receipts of less than $1 million file their CAT return and pay the $150 minimum tax on an annual basis. Annual returns are due each year by May 10. However, taxpayers with Ohio-source receipts over $1 million must file CAT returns on a quarterly basis. These CAT returns and their respective tax payments are both due by the 10th day of the second month following a calendar quarter. Both annual and quarterly CAT returns should be filed electronically.

For purposes of filing CAT returns some taxpayers may be required to file on a combined basis. This means that if two taxpayers with Ohio nexus are more than 50% of their owned—directly or indirectly—by related interests, those taxpayers must file their CAT returns as though they were a single company. Accordingly, the $150,000 threshold registration requirement and the tax on receipts over $1 million would be determined on a combined basis.

Does the Canada-U.S. Tax Treaty provide protection?

The tax treaty between the U.S. in Canada applies only to federal income tax and has no direct effect on state-level taxes such as the CAT. Some states have elected to determine gross receipts or taxable income with reference to a taxpayer's federal tax return—in effect adopting the tax treaty for state purposes. This is not the case in Ohio; CAT taxable receipts are determined on an annual or quarterly basis without reference to amounts excluded by income tax treaties. As a result, even if a transportation company is not subject to U.S. federal tax under the Canada-U.S. Tax Treaty it may still be required to file and pay the Ohio CAT.

What are my options if I need to file?

Depending on a taxpayer's circumstance, they may wish to request a Voluntary Disclosure Agreement with the Ohio Department of Taxation. If they qualify, the state will normally waive penalties associated with non-filing and limit their reach back to the last three years. Tax and interest for those periods as applicable will need to be paid.