

TENNESSEE DEPARTMENT OF REVENUE  
REVENUE RULING # 17-08

**Revenue rulings are not binding on the Department. This ruling is based on the particular facts and circumstances presented, and is an interpretation of the law at a specific point in time. The law may have changed since this ruling was issued, possibly rendering it obsolete. The presentation of this ruling in a redacted form is provided solely for informational purposes, and is not intended as a statement of Departmental policy. Taxpayers should consult with a tax professional before relying on any aspect of this ruling.**

**SUBJECT**

Application of the Tennessee franchise and excise taxes to a for-hire trucking company.

**SCOPE**

Revenue Rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue Rulings are advisory in nature and are not binding on the Department.

**FACTS**

The Taxpayer is an over-the-road, for-hire trucking company incorporated and based in [REDACTED—STATE]. It does not own or rent property in Tennessee and has no employees or shareholders in Tennessee. The Taxpayer primarily provides interstate motor carrier services throughout the United States but also provides intrastate motor carrier services within Tennessee. In some cases, the Taxpayer only travels through Tennessee, with trips originating and concluding in other states. In other cases, the Taxpayer originates trips in Tennessee but concludes those trips in another state or originates trips in a state other than Tennessee and concludes those trips in Tennessee. Finally, in other situations, the Taxpayer both originates and concludes trips inside of Tennessee.

**RULING**

Under what circumstances is the Taxpayer subject to the Tennessee franchise and excise taxes?

Ruling: The Taxpayer has substantial nexus with Tennessee and is subject to Tennessee franchise and excise taxes if it provides intrastate transportation services within Tennessee, makes deliveries of goods into Tennessee that originate in another state, or transports goods from Tennessee for delivery into another state.

**ANALYSIS**

**SUBSTANTIAL NEXUS**

All persons doing business in Tennessee and having substantial nexus in the state are subject to the Tennessee franchise and excise taxes.<sup>1</sup>

“Doing business in the state” is “any activity purposefully engaged in within Tennessee, by a person with the object of gain, benefit, or advantage, consistent with the intent of the general assembly to subject such persons to the Tennessee franchise/excise tax to the extent permitted by the United States Constitution and the Constitution of Tennessee.”<sup>2</sup>

A person has “substantial nexus in this state” if the person has “any direct or indirect connection . . . to this state such that the taxpayer can be required under the Constitution of the United States to remit the tax imposed under this part and part 21 of this chapter.”<sup>3</sup> TENN. CODE ANN. § 67-4-2004(49)(A) includes a non-exclusive list of connections that establish substantial nexus. Such connections include the taxpayer having a bright-line presence in the state as set forth in TENN. CODE ANN. § 67-4-2004(49)(A)(v).

The bright-line presence standards for substantial nexus operate such that if a taxpayer has at least \$50,000 of property or payroll in the state, at least \$500,000 of receipts in the state, or at least twenty-five percent (25%) of its total property, payroll, or receipts in Tennessee, it has substantial nexus with Tennessee without considering any other connections with the state.<sup>4</sup> However, it is not required that a taxpayer have bright-line presence in order to have substantial nexus with Tennessee. A taxpayer may have substantial nexus with Tennessee with lesser amounts of property, payroll, and receipts in Tennessee if it has any connection with the state that requires it to remit tax under the United States Constitution.<sup>5</sup>

A motor carrier transporting property for hire that is organized and commercially domiciled outside of Tennessee and neither maintains an office in Tennessee nor has property or employees in Tennessee has substantial nexus with Tennessee if it provides intrastate transportation services within Tennessee, makes deliveries of goods into Tennessee that originate in another state, or transports goods from Tennessee for delivery into another state. Although such motor carrier is not located in Tennessee and does not have employees in Tennessee, because it is a user of Tennessee’s public highways, it receives the benefit of the protection of Tennessee’s laws and is physically present in Tennessee. No state other than Tennessee provides protection to such motor carrier’s trucks and drivers when it makes intrastate trips within Tennessee or makes pickups or deliveries in Tennessee.

Traveling through Tennessee on one or more trips that originate and terminate outside Tennessee, where the vehicle makes no pickups or deliveries and conducts no other business activity in Tennessee does not constitute doing business in Tennessee. Thus, if the Taxpayer makes trips that

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<sup>1</sup> TENN. CODE ANN. §§ 67-4-2007(a), -2105(a) (Supp. 2016).

<sup>2</sup> TENN. CODE ANN. §§ 67-4-2004(14)(A) (Supp. 2016)

<sup>3</sup> TENN. CODE ANN. § 67-4-2004(49)(A).

<sup>4</sup> See TENN. CODE ANN. § 67-4-2004(49)(A)(v).

<sup>5</sup> See TENN. CODE ANN. § 67-4-2004(49)(A).

both begin and end in Tennessee, delivers goods into Tennessee that originate in another state, or makes pickups of goods from Tennessee for delivery into another state during its tax year, it is subject to Tennessee franchise and excise taxes. For example, in 2017, if the Taxpayer operates trucks that travel from Indiana through Kentucky and Tennessee to a destination in Alabama and the trucks make no pickups or deliveries in Tennessee, it is not doing business in Tennessee in 2017, and is not subject to franchise and excise taxes. The fact that the Taxpayer may stop in Tennessee to refuel or purchase a meal alone does not constitute doing business in Tennessee. In 2018, if the Taxpayer makes stops in Tennessee to pick up or deliver cargo (or both), it has nexus with Tennessee and is doing business in the state in 2018, and is subject to franchise and excise taxes.

If at any time the Taxpayer determines that it is subject to franchise and excise taxes in Tennessee, it must register with the Department and begin remitting franchise and excise taxes. It may register electronically using the Department's Online Tax Registration Page<sup>6</sup> or the Application for Franchise, Excise Tax Registration.<sup>7</sup> If the Taxpayer determines that it should have remitted franchise and excise taxes in prior tax periods but did not do so, it can request to enter a voluntary disclosure agreement with the Department.<sup>8</sup>

#### **APPORTIONMENT**

If the Taxpayer is doing business in Tennessee and has substantial nexus with the state whereby it is subject to the franchise and excise taxes, it may apportion its net worth for franchise tax purposes and its net earnings for excise tax purposes. Tennessee has a special apportionment formula for common carrier motor carriers set forth in TENN. CODE ANN. §§ 67-4-2013(a)(2), -2113(2) (Supp. 2016). The ratio for common carrier motor carriers is the average of the following two ratios:

(A) the gross receipts from operations on business beginning and ending entirely within Tennessee as compared with entire gross receipts from such operations within and without Tennessee; and

(B) the ratio of the total franchise miles, or odometer miles, if there are no franchise miles, which it holds or uses under lease, contract, or certificate of convenience and necessity from the Interstate Commerce Commission or the department of safety inside the state, to the total franchise or odometer miles to which it holds or uses certificates from such commission or department, and like commissioners, departments or agencies of other states, in and outside the state, all as shown by the annual reports made by the corporation to the various commissions from which it holds certificates.

TENN. CODE ANN. §§ 67-4-2013(a)(2), -2113(2).

In practical application, the Taxpayer should apportion its net worth and income as follows:

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<sup>6</sup> The Department's Online Tax Registration page is available on the Department's website at <https://apps.tn.gov/bizreg/>.

<sup>7</sup> The Application for Franchise, Excise Tax Registration is available on the Department's website at <https://www.tn.gov/assets/entities/revenue/attachments/FaEapplicationFill-in.pdf>.

<sup>8</sup> Additional information regarding the Voluntary Disclosure Agreement process is available on the Department's website at <https://www.tn.gov/revenue/article/voluntary-disclosure>

$$\frac{\text{(A) } \underline{\text{Gross Receipts from Intrastate Operations}}}{\text{Gross Receipts from Operations Everywhere}} + \frac{\text{(B) } \underline{\text{In-state odometer miles}}}{\text{Everywhere odometer miles}}$$


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The numerator of (A) includes only the Taxpayer's gross receipts from trips that both begin and end in Tennessee. The numerator of (B) includes all miles driven within Tennessee including miles traveled while merely driving through Tennessee while carrying cargo. The denominator of (B) is total miles travelled both inside and outside the state. This includes pass through miles, not just miles associated with pickups or deliveries in Tennessee.

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