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KSM

truck times

The Financial Side of the Trucking Industry

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Katz, Sapper & Miller, LLP
Certified Public Accountants

Multi-State Taxation for Interstate Carriers

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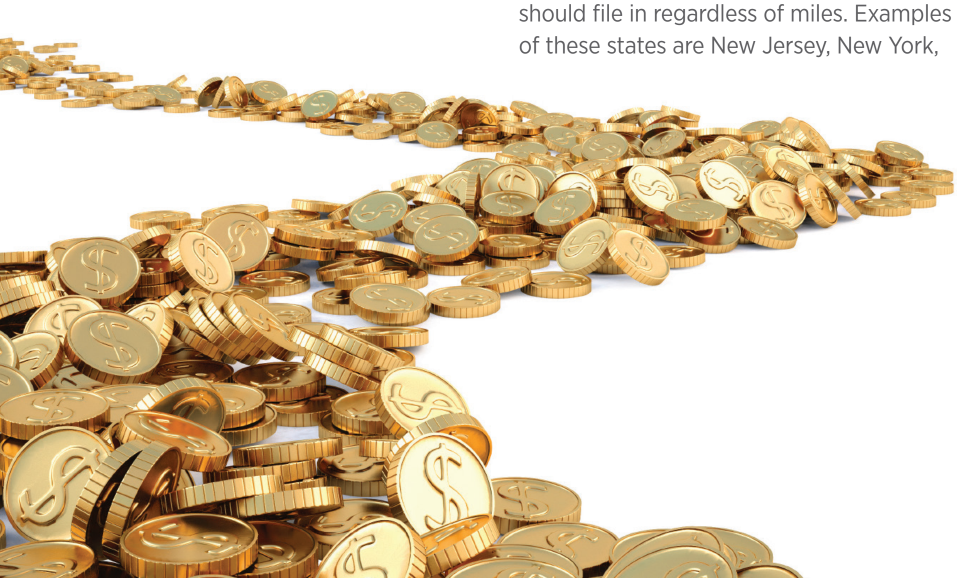
Due to shrinking budgets and deficit spending, state departments of revenue are actively searching for interstate carriers that should be filing income tax returns in their state. Some states, such as New Jersey, are impounding tractors during routine traffic stops if the officer cannot verify that the company is current on their income tax filings. Other states are reviewing fuel tax filings and cross referencing them to income tax rolls. Once a company has been flagged as a non-filer, many states will request returns be prepared for the last three to six years and the tax be paid with the potential for large interest and penalty assessments.

It is recommended that interstate carriers take time annually to meet with tax advisors and legal counsel to review which states the company is driving through and each state's required tax filings. Generally, nexus is created in each state that the company passes through, though some states do have a *de minimis* exception. Many interstate carriers are willing to accept some risk and therefore choose to use some reasonable threshold of state miles to total miles to determine if a return will be filed in a certain state. Beware, there are certain states that interstate carriers should file in regardless of miles. Examples of these states are New Jersey, New York, and any state that the company has real property or employees. These guidelines apply even if the company is in a loss position as many states have franchise taxes that are based on gross receipts, not taxable income. Once a determination has been made as to which states an interstate carrier will be filing, research must be done to determine how that particular state apportions transportation revenue.

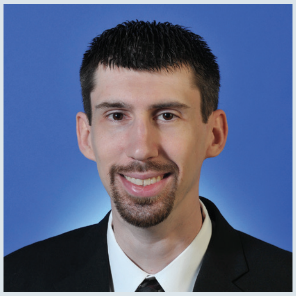


States generally apportion transportation revenue in one of four ways:

1. Straight percentage of state revenue miles divided by total revenue miles.
2. Standard "three-factor" apportionment consisting of sales, payroll and property in the state.
3. Percentage of intrastate revenue or intrastate miles to total revenue.
4. Two-part calculation consisting of both an intrastate and interstate portion.

There is no particular reason a state chooses to adopt one of the above methods, and furthermore many states change their methods frequently. The method that a state uses can have significant impact on a company's state tax expense. For example if the company has terminals in states other than their home state, the "three-factor" apportionment will result in a higher apportionment percentage in the state the real property is located. The states that only use intrastate revenue generally result in the lowest apportionment percentage for interstate carriers because most are not delivering to the same state the load originated.

Income Tax Updates



By Daniel Larson, CPA, CMA
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Congress will likely be busy in the closing months of 2012 as multiple tax laws have expired, or will expire at year end. It is unknown what, if any, action will be taken by Congress. Lack of action could negatively affect millions of taxpayers. Among the tax benefits affected are bonus depreciation, Sec. 179, Alternative Minimum Tax (AMT) exemptions, and estate law changes.

Bonus Depreciation, Sec. 179 and AMT Exemptions
Effective Jan. 1, 2012, the highly favored 100 percent bonus depreciation was reduced to 50 percent. The 50 percent bonus depreciation will expire at year end. Likewise, Sec. 179 has been reduced from $500,000 in 2011 to $139,000 for 2012, with a limit of $560,000 in additions before the deduction begins to phase out.

In 2012, the AMT exemption has been reduced to $33,750 for single filers and $45,000 for married taxpayers filing jointly. This exemption is down from $48,450 and $74,450 for single and married filers, respectively. Since 2000, Congress has passed an annual "AMT patch" that adjusted the exemption to a higher amount. Congress has been unwilling to pass a permanent fix that would annually adjust the exemption for inflation. The tax revenue lost with a permanent fix is estimated to cost in excess of one trillion dollars through 2022.

Trucking Implications
With the end of bonus depreciation, asset intensive industries such as trucking will face higher amounts of taxable income over the next few years as tax depreciation drops significantly. The cause is two-fold: (1) depreciation of new purchases will be spread over multiple years; and (2) little or no depreciation will be available from assets purchased in the past because the benefit has already been received via bonus depreciation and increased Sec. 179.

An estimated four million taxpayers paid AMT tax in 2011. Assuming no patch for 2012, roughly 30 million taxpayers would be subject to AMT. Both bonus depreciation and Sec. 179 are allowed under AMT, resulting in lower AMT taxable income in recent years. Compounding the reduction in depreciation with the reduction in the AMT exemption increases the likelihood of taxpayers with taxable income being subject to AMT tax.

Estate Tax Updates
Beginning on Jan. 1, 2012, an individual making a gift or leaving an estate worth $5.12 million ($5 million in 2011) was exempt from paying gift or estate tax, depending on lifetime transfers. Absent a law change, effective Jan. 1, 2013, the gift and estate tax exemptions are scheduled to revert back to the 2002 exemptions of $1 million.

Also expiring on Dec. 31, 2012, is the transferability of a decedent's unused gift/estate exemption to a surviving spouse. Transferability of the exemption is accomplished by making an election on a timely filed estate tax return (IRS Form 706). A married couple can shield a total of $10.24 million from estate tax. Without this transferability feature, married couples will be required to carefully draft estate documents and title assets so as not to potentially waste the exemption of the first spouse to die.

Common 401(k) Retirement Plan Operating Issues

By Chris Felger, CPA, CMA, CFM
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The trucking industry is one of the most highly regulated industries in America. When someone in the industry references compliance, most commonly think of the Federal Motor Carrier Safety Administration, the United States Department of Transportation, or a variety of other federal and state government agencies. Employees who are responsible for the administration of the company's 401(k) retirement plan are also likely aware of the complexity of the rules and regulations specified by the Department of Labor (DOL) and Internal Revenue Service (IRS) related to these plans.

It is important for a plan administrator to stay informed of these rules and regulations and be familiar with plan documents and operation. It is equally important to work with third-party service providers that are knowledgeable in this area. During the conducting of audits or performing of 401(k) plan administration of trucking companies, the three issues addressed below are frequently noted:

Eligibility
A 401(k) plan document will specify the eligibility requirements for the plan. These are the requirements that must be met for an employee to participate in the plan. They could be based on age, number of hours worked in a 12-month period, or other criteria. Mistakes in applying the eligibility criteria could result in an ineligible employee being enrolled in the plan or an eligible employee being excluded from enrolling in the plan. It is important that the employer have a clear understanding of the definition of eligibility for plan enrollment and the related plan entry dates.

Failure to Use the Correct Eligible Plan Compensation for Employee Contributions
A 401(k) plan document will specify a definition of eligible plan compensation. This is the amount that is used as the base to calculate employee contributions. This may or may not include overtime, safety or fuel efficiency bonuses, vacation and holiday pay, or taxable fringe benefits. If employee contributions are calculated using an incorrect definition of eligible compensation, then a corrective contribution may be required by the employer to put the participant's account in the position it would have been if the error was not made. Generally an employer would be required to make a contribution equal to 50 percent of the amount that the employee would have contributed if calculated correctly, 100 percent of any employer matching contribution that would have been matched, and an amount of lost earnings, which is what the amount would have earned if invested in the plan. It is not allowable for the employer to go back and withhold additional amounts from the employee to obtain the correct amount that should have been withheld.

Failure to Timely Remit Amounts Withheld from Employees' Paychecks to the Plan
If a 401(k) plan allows for employee contributions, employers are required to remit those amounts to the plan as soon as administratively feasible. This also applies to participant loan repayments.

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See "Retirement."

Exploring the Benefits of a Board of Advisors

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In these ever-changing times, trucking companies should consider forming a board of advisors, which can provide the CEO and senior management team with unbiased advice and guidance. An advisory board does not have formal legal authority over a company or fiduciary duties to the company's shareholders associated with a board of directors. They are formed for the purpose of providing advice and guidance. Below are some items to consider when exploring the formation of an advisory board.

Board Make-Up
Advisory boards can vary in size, depending on the company's size, complexity, goals and management skill sets. For most privately held companies, three to five outside members is recommended. In selecting potential members, the company should seek talented, honest and objective individuals who have a sincere interest in seeing your company succeed. These should be individuals who have been where you want the company to go. For example, if a company wants to double in size, it should seek someone who has helped grow a company. This individual would have real life experience to help the company reach its goal.

It is important to select individuals who have good chemistry with the CEO and senior management, but also make sure that they are willing to state their opinion, even if it may be unpopular. Avoid "yes" men and women. Generally, it is not recommended to include a company's attorney, accountant or insurance agent on the advisory board if they have a vested interest in the company, which may impair their objectivity. It is also not advisable to ask family or friends to join the advisory board as they may lack objectivity as well.

Board Meetings
It is recommended that the advisory board meet with the CEO and senior management quarterly at an offsite location (to reduce distractions). Each meeting should have an agenda, which helps guide the meeting's goals and objectives. Example agenda items could include: business update by functional area, new business opportunities, current and future business challenges and long-range planning. The meetings should be a platform to keep the CEO and senior management on task and accountable.

Benefits of an Advisory Board
Some of the potential benefits of an advisory board include:

- The CEO and senior management receive unbiased, objective advice and guidance.
- The advisory board keeps the management team accountable for its objectives and goals.

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See "Advisory Board."

Record Retention Periods

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Records subject to the retention guidelines apply to both paper and computer records alike.

The Internal Revenue Service (IRS) requires taxpayers to maintain documents and records that support tax positions and returns filed. In addition, the Federal Motor Carrier Safety Administration (FMCSA) requires certain documents and records be available for examination. The inability to produce documents under an examination can have harsh consequences on the outcome of an audit. Therefore, the balance of knowing how long to continue storing or destroying tax and company records can make file purging a risky task.

Generally, the tax regulations require records be maintained as long as they are necessary to administer the tax law. The federal statute of limitation is normally three years, however, if income is substantially under reported, or the return is fraudulent, or no return has been filed, the statute of limitations could be six years or longer. The FMCSA generally requires that driver logs be maintained for six months. The statute of limitations in various states could exceed the federal regulations.

Records subject to the retention guidelines apply to both paper and computer records alike. In an age where endless amounts of data, documents and records can be retained electronically, it is essential to equally enforce legal and company retention policies across both the storage room and the computer server. Not maintaining documents for the required time period or retaining certain information for an endless time period can create unintended consequences and liabilities.

Outlined below are suggested retention periods for common business and personal documents.

Permanent Records. Both individuals and businesses have "permanent" type documents and information that should be kept indefinitely.

Six/Seven-Year Records. The IRS may go back six years when auditing tax returns depending on the examination issue. Therefore, records should be carefully stored for this period. Please keep in mind the statute of limitation period starts at the later of the date the return is filed, or the extension due date if one was requested. For example, if the 2008 return was extended for six months and filed on April 20, 2009 the six year statute of limitation would not expire until Sept. 15, 2015.

Three-Year Documents. These records are more detailed in nature supporting tax returns and other business matters, but with the passage of three years are usually no longer needed.

Unclassifiable. Unfortunately, like everything, one size does not fit all and certain documents and unusual circumstances may dictate longer or judgmental retention periods. In addition, it may be necessary to consult an attorney or accountant in special cases.

Organization, regimented procedures and proper policies on record retention and destruction can reduce the liability risk associated with record management and ease the annual task of purging the next year's aged files.

Permanent Records

- Annual audited financial statements

Continued on page 7.
See "Retention."

Retention

(continued from page 6)

- Canceled checks (tax payments, fixed asset purchases, other major items)
- Chart of accounts
- Company minutes
- Corporate stock records
- General ledgers and journals
- IRS audit reports
- IRS elections
- Legal documents
- LIFO inventory records
- Property appraisals
- Real estate purchase and sell records
- Retirement and pension records
- Tax returns
- Trademark registrations
- Trust documents
- Vital records (birth/death/marriage/divorce/adoption/etc.)
- Workpapers for tax returns

Six/Seven-Year Records

- Bank loans (after payoff)
- Bank statements
- Contracts (after expiration)
- Employee payroll records
- Insurance records
- Leases (after expiration)
- Mortgage and notes receivable (after payoff)
- Accounts payable ledgers
- Accounts receivable ledgers
- Employee time records
- Inventory records (non-LIFO)
- Note receivable ledgers
- Payroll tax records and reports
- Subsidiary ledgers

Three-Year Documents

- Auto mileage books
- Bank deposit slips
- Bank reconciliations
- Budgets
- Cancelled checks
- Charitable acknowledgements
- Credit card statements
- Entertainment records
- Expense reports
- Expired insurance policies
- Interim financial statements
- Medical bills
- Petty cash vouchers
- Sales invoices
- Vendor invoices
- Depreciation schedules (three years after life of asset)
- Employee personnel records (three years after termination)

Unclassifiable

- Car records (keep until car sold)
- Credit card receipts (keep until reconciled on statement)
- ATM and deposit slips (keep until reconciled on statement)
- Insurance policies (keep for life of policy)
- Pay stubs (keep until reconciled with W-2)
- Property records/builder contracts/improvement receipts (keep until property sold)
- Sales receipts (keep for life of warranty or life of item on large purchases)
- Warranties and instructions (keep for life of product)
- Other bills (keep until payment verified on next statement)

Advisory Board

(continued from page 5)

- The management team will be surrounded by individuals who are successful and who have achieved the goals of the company (assuming the board was assembled properly and in line with the company's objectives and goals).
- If there are certain skill sets lacking in the management team, the advisory board can help fill in these gaps.
- The advisory board provides a sounding board to discuss new business opportunities as well as strategic planning.
- In a family-owned business, an advisory board can provide objective, unbiased advice when discussing succession planning.

Forming an advisory board can have a positive impact on an organization and provide an advantage over competition. Understanding company objectives and goals is the first step. Once goals and objectives have been established, seek individuals who will provide the most value to your organization and help the company reach its goals.

Retirement

(continued from page 4)

The general consensus is that as soon as an employer can remit payroll taxes that they should be able to remit amounts withheld from employees' paychecks. The DOL has established a safe harbor for small plans (those defined as having less than 100 participants), which indicates that remittances within seven business days of the payroll date will not be considered late. However, this does not apply to large plans. If remittances are made late then generally an employer would be required to make a contribution for lost earnings based on the delay in the remittance to the plan and pay a 15 percent excise tax penalty on the amount of the lost earnings.

Many human resource professionals believe that competitive base pay, medical insurance, and a 401(k) retirement plan are key components of a compensation package to attract and retain competent employees. An effective recruiting and retention strategy, which is critical today given the shortage of qualified truck drivers and heavy-duty mechanics, should include these components.

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Here and There in the Trucking Industry

Katz, Sapper & Miller (KSM), in conjunction with **KSM Transport Advisors (KSMTA)**, recently released the results of our **updated benchmarking survey**, which is designed to provide detailed financial and operating performance data for trucking companies. Download the report at ksmcpa.com/transportation.

Tim Almack and **Jason Miller** attended the Truckload Carriers Association annual convention in Kissimmee, Fla. in March 2012.

Andy Belser and **Ed Stohlman** attended the American Trucking Associations' National Accounting and Finance Council's annual meeting in Tampa, Fla. in June 2012.

Tim Almack attended the Kentucky Motor Transport Association's Leadership and Management Conference in June 2012. Tim also presented a session entitled "Problem Solving to Profitability" at the Motor Transport Underwriters' Annual Risk Management Conference in Indianapolis; and presented to TAB Bank Inc.'s sales group in Salt Lake City, Utah in July 2012. In addition, Tim served on the Indiana Motor Truck Association's Trucking Industry Political Action Committee (TIPAC) Golf Outing Committee and participated in the outing in August 2012.

David Roush presented a webinar sponsored by TMW Systems, Inc. entitled "Choose Wisely: Engineer Your Freight Network to Improve Profitability" in July 2012.

Jason Miller and **Randy Hooper** attended the Illinois Trucking Association's TIPAC golf outing in July 2012.

Mark Flinchum co-presented a session entitled "Staying Calm, Cool and Collected: ESOP Accounting and Cost Basis Calculations" at the 11th Annual Tri-State ESOP Conference in Louisville, Ky. in August 2012.

KSM's Committment to the Trucking Industry:

- Alabama Trucking Association
- American Trucking Associations
- Illinois Trucking Association
- Indiana Motor Truck Association
- Intermodal Association of Chicago
- Iowa Motor Truck Association
- Kentucky Motor Transport Association
- Michigan Trucking Association
- Mid-West Truckers Association
- Missouri Trucking Association
- National Tank Truck Carriers
- Ohio Trucking Association
- Pennsylvania Motor Truck Association
- Tennessee Trucking Association
- Truckload Carriers Association

***Truck Times* Editorial Committee:**
Mark Flinchum, Tim Almack, Andy Belser, Donna Blackmon, Christopher Djonlich, Jennifer Moore

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