

## Pennsylvania “Nexus Tax” Issues for Tour Bus Operators and the Revised Business Activities Questionnaire

### What is “Nexus?”

Despite what you may have heard, the “nexus tax” is not really a tax. It is just the process of determining if a company has sufficient business activity in Pennsylvania that would subject it to Pennsylvania taxes.

If you do business in Pennsylvania, you may have to pay Pennsylvania corporate net income and foreign franchise taxes. The “uniformity clause” of the state constitution requires the state to tax like entities the same. Thus, it can’t exempt out-of-state tour bus companies from the taxes paid by in-state bus companies. However, there are *de minimis* standards applying to these two taxes for companies that have very limited business activity in the state. These *de minimis* standards, in other words, set the level of business activity that, if exceeded, would require an out-of-state truck or tour bus company to file Pennsylvania tax forms. More on that below.

### History of the Issue

The House Tourism and Recreational Development Committee first received inquiries about nexus from tour operators and destinations in the spring of 2003, including questions about an out-of-state tour operator that was assessed for unpaid taxes. Committee chairman Rep. Robert Godshall and other lawmakers met with state Department of Revenue officials in April of that year and expressed concerns about what they had been hearing.

The Tourism Committee then held a follow-up meeting with the department in November 2003 to discuss the issue further, at which time the department introduced its draft *de minimis* standards for the amount of business activity required in Pennsylvania before the company has to file state tax forms.

In January 2004, the Tourism Committee held a public hearing at which time it heard testimony from local tourism agencies. At that meeting, Rep. Scott Boyd from Lancaster County proposed that the department consider revising its Business Activities Questionnaire (BAQ) to clarify it and address the questions being raised by motor carriers and others.

### The Business Activities Questionnaire

Summer 2004 marked the development of the Department of Revenue’s expanded and more detailed Business Activities Questionnaire with added information applying to motor carriers. The BAQ now has a special section devoted to “Pennsylvania Motor Carrier Activities,” which it didn’t have before. There is also a prominent section on page 1 highlighting nexus issues and summarizing the revised *de minimis* standards.

Under those standards, a truck or bus company would have to file state corporate net income and foreign franchise tax returns if its activities exceed either of the following in the taxable year:

1. The activity exceeds 50,000 loaded miles in Pennsylvania and the company makes at least one trip with pickups or deliveries in Pennsylvania; or
2. The company has a Pennsylvania apportionment fraction of more than 5 percent and has more than 12 trips with pickup or deliveries in Pennsylvania.

The new "Motor Carrier Activities" section of the BAQ (on page 5) consists of several questions asking for a description of the company's business activities, how often deliveries and pickups are made, etc.

**It is very important** that out-of-state bus companies receiving a BAQ from the Pennsylvania Department of Revenue complete and return the form in a timely fashion. Otherwise, the department could assume that the company's activities exceed the *de minimis* standards and that the company is subject to Pennsylvania taxes.

More information on Pennsylvania taxes is available on the Department of Revenue Web site at [www.revenue.state.pa.us](http://www.revenue.state.pa.us). For a detailed explanation of the *de minimis* standards, search for "Corporation Tax Bulletin 2004-01" on the Revenue site.

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