

# Income Taxation of Interstate Motor Carriers: A Need for Equity and Uniformity

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### I. INTRODUCTION

In 1977, the United States Supreme Court's holding in *Complete Auto Transit, Inc. v. Brady*<sup>1</sup> clearly established the Constitutional right of

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1. 430 U.S. 274 (1977).

states to tax business conducted in interstate commerce. The Court identified four criteria that had to be satisfied for a state tax on interstate commerce to pass Constitutional scrutiny: (1) the activity taxed must have a substantial nexus with the taxing state, (2) the tax must be fairly apportioned, (3) the tax should not discriminate against interstate commerce, and (4) the tax should be fairly related to the services provided by the state.<sup>2</sup> Historically, the nexus criterion, which inevitably runs into the fourth criterion,<sup>3</sup> and apportionment have proven to be the most troublesome for interstate businesses.

This result is especially true for today's interstate motor carrier industry, which is faced with a multiplicity of state apportionment formulas that lead to inequitable and confusing results. Because the courts have chosen to ignore the fair apportionment issue, it remains for the states and the motor carrier industry to resolve the question.

This article first introduces the nexus and apportionment issues in a broad historical context. Next, it analyzes selected state statutory law, as well as regulations and case law related to the nexus issue, including the proposed trucking regulation drafted by the Multistate Tax Commission. It then, using the same sources, examines the methods for apportioning income to a state after a nexus has been established. The article closes with a presentation and discussion of the results of a questionnaire sent to 500 randomly selected motor carriers.

## II. BACKGROUND

Nexus refers to the level of activity that must exist within a taxing jurisdiction before the jurisdiction can impose a tax. As a fact-bound issue,<sup>4</sup> nexus requires some "definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax."<sup>5</sup> Nexus clearly exists where a business is incorporated and headquartered in a particular state such that its legal and commercial domicile are in that state.<sup>6</sup> However, nexus may not exist where a business has no clear physical presence in a state. That is, the business does not own property, maintain an office or storage facility, or have employees who reside in the taxing state. For example, in the area of use tax collection, the United States Supreme Court found that an out-of-state mail order seller that maintained no office, had no agents or solicitors, owned no property and had no telephone listing in the state, but shipped merchandise into the

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2. *Id.* at 280.

3. *Western Maryland Ry. Co. v. Goodwin*, 282 S.E.2d 240, 244 (W. Va. 1981).

4. *Id.*

5. *Miller Bros. v. State of Maryland*, 347 U.S. 340, 345 (1964).

6. *See id.* at 345 for a summary of activities which create nexus.

state, lacked sufficient nexus to be a collector of that state's use tax.<sup>7</sup>

In the income tax area, the United States Supreme Court's response to a series of 1959 cases alarmed the business community. The Court concluded in *Northwestern States Portland Cement Co. v. Minnesota*<sup>8</sup> that nexus existed where the taxpayer's only activities in the taxing state consisted of regular and systematic solicitation of orders for the sale of its products. The orders were accepted, filled and delivered by the seller in and from its home office in another state. To facilitate its business in the taxing state, the seller leased a sales office which was run by an employee who was also a district manager. The nexus requirement was not the controlling question, presumably because of the leased sales office and employees in the taxing state. The Court focused upon the fourth criterion, "whether the state has given anything for which it can ask return,"<sup>9</sup> and concluded that the taxing state had given opportunities, provided protection and conferred certain benefits on the out-of-state taxpayer so as to provide Constitutional justification for the tax. Shortly thereafter, the Court refused to address a state income tax by denying certiorari in *Brown-Forman Distillers Corp. v. Collector of Revenue*<sup>10</sup> and *International Shoe Co. v. Fontenot*.<sup>11</sup> In *Brown-Forman*, the only connection with the taxing state was the presence of "missionary men." In *International Shoe*, the only connection with the taxing state was the regular and systematic solicitation by out-of-state salesmen in the taxing state. Taxpayer owned automobiles and samples were the only property in the taxing state.

Fearing that such marginal connections as mere solicitation or the presence of salesmen in a taxing state would produce nexus, the business community pressured Congress into passing Public Law 86-272.<sup>12</sup> Public Law 86-272 prohibits states from imposing an income tax on out-of-state sellers of tangible personal property in two situations. The first tax-free activity involves solicitation by out-of-state employees of sellers where the orders are approved and filled outside the taxing state.<sup>13</sup> The second tax-free activity involves the use of "independent contractors" where the out-of-state seller solicits through an independent contractor

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7. *National Bellas Hess, Inc. v. Department of Revenue*, 386 U.S. 753 (1967). The mail order, use tax collection issue is of sufficient magnitude that legislation to resolve it was introduced in Congress in 1986 and 1987. See H.R. 5021, 99th Cong., 2nd Sess. (1986), H.R. 4365, 99th Cong., 2nd Sess. (1986) and H.R. 1242, 100th Cong., 1st Sess. (1987). To date, the legislation has not been adopted.

8. 358 U.S. 450 (1959).

9. *Id.* at 465.

10. 101 So. 2d 70 (La. App. 1958), *cert. denied*, 359 U.S. 28 (1959).

11. 107 So. 2d 640 (La. App. 1958), *cert. denied*, 359 U.S. 984 (1959).

12. 15 U.S.C.S. Sec. 381 (Law Co-op. 1984 & Supp. 1988).

13. 15 U.S.C.S. Sec. 381(a)(1) (Law Co-op. 1984 & Supp. 1988).

whether or not that person maintains an office in the taxing state.<sup>14</sup> Public Law 86-272 addressed and resolved many of the nexus issues dealing with only one specific area, solicitation of goods, in the broad spectrum of interstate taxation of income.<sup>15</sup>

The same uncertainties that faced out-of-state sellers of goods who solicited in a taxing state currently face motor carriers who in some manner use the highways of a taxing state. The very nature of the motor carrier business gives rise to the uncertainties because, more often than not, the only presence a motor carrier has in the taxing state is pass-through use of the state's highway system. For example, even though a motor carrier uses a state's highway system, it may not be incorporated in the taxing state and its legal or commercial domicile may not be in the taxing state. Such uncertainty results in part from diverse statutory and regulatory nexus requirements established by the states and a lack of agreement between the motor carrier industry and the state and local taxing authorities as to what represents a "fairly apportioned tax."

Historically, the United States Supreme Court has given the states wide discretion in determining the parameters of a "fairly apportioned tax." As a result, most states have opted to apportion income from a multi-state business based upon a three-factor formula consisting of in-state to in-state and out-of-state property, payroll and sales.<sup>16</sup> Nevertheless, in the case of *Moorman Mfg. Co. v. Bair*,<sup>17</sup> the Supreme Court allowed Iowa's single factor apportionment formula, based solely on sales, to stand over taxpayer's vigorous due process and commerce clause objections. The Court clearly recognized that duplicative taxation might occur where different states use different formulas; but, it continued to adhere to the principle that a state's apportionment formula will not be disturbed unless the taxpayer has "proved by 'clear and cogent' evidence that the income attributed to the state is in fact 'out of all appropriate proportion to the business transacted . . . in that state,' or has 'led to a grossly distorted result.'"<sup>18</sup> The *Moorman* Court concluded by suggesting that Congress resolve the fairly apportioned question. "It is to that body, and not this Court, that the Constitution has committed such policy decisions."<sup>19</sup>

Other significant distortions in apportionment formulas abound. For

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14. 15 U.S.C.S. Secs. 381(c), (d)(1) (Law Co-op. 1984 & Supp. 1988).

15. See P. HARTMAN, FEDERAL LIMITATIONS ON STATE AND LOCAL TAXATION (1981) at 479-521 for an excellent analysis and discussion of the strengths and weaknesses of Public Law 86-272.

16. See MULTISTATE CORPORATE TAX ALMANAC at 182-186 (W.A. Raabe ed. 1987).

17. *Moorman Mfg. Co. v. Bair*, 437 U.S. 267 (1978).

18. *Id.* at 274.

19. *Id.* at 280.

example, several states use two factor formulas or arbitrarily weigh certain factors all of which tend to favor the state.<sup>20</sup> *Sjong v. State Dept. of Revenue*<sup>21</sup> is a case in point. Mr. Sjong, a resident of the state of Washington, was a commercial crab fisherman. His fishing vessel was licensed, registered, and harbored in Washington with Seattle as its designated home port. Sjong fished exclusively in the international waters surrounding Alaska and entered Alaskan ports only for the purpose of selling his catch to local processors and obtaining supplies. Sjong estimated he made no more than 20 to 30 trips into Alaskan ports per year. In applying the standard three-factor formula to his corporate net income, the Department calculated the property factor on the basis of the "port-day" method which consists of a ratio based on the number of days spent in ports inside Alaska to the total number of days spent inside and outside Alaska. The definition of "port-days" excluded idle time between fishing seasons, but included time spent stocking and leaning the vessel, delivering fish, and taking on additional supplies during the fishing season. Mr. Sjong argued that the "voyage-day" method would be a fairer approximation of the property factor because it apportions net income based on the number of days in Alaska to the total number of days inside and outside Alaska. In addition, the Department calculated the payroll factor to be 100 percent based on the contention that the earnings of the fishing crew were directly dependent upon the sale of the crab catch to an Alaskan processor. Mr. Sjong contended that because the property and payroll factors were weighted in favor of the Department, 85 to 92 percent of his income was allocated to Alaska when in fact more than 95 percent of his business activity was outside Alaska. The apportionment method, he argued, was manifestly unfair. Similar to the United States Supreme Court, the *Sjong* court recognized that weighted factors can produce a heavily distorted result, but it stated that "[o]ur task is not to determine whether this formula is the best method of apportioning income, but merely whether it is fairly calculated to assign to the state that portion of net income reasonably attributable to the business done in the state."<sup>22</sup>

Today the interstate motor carrier industry is faced with the same dilemma as that which existed in the *Sjong* case, the primary difference being the mode of transportation. The interstate motor carrier is faced with a multiplicity of apportionment formulas some of which disproportion-

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20. For example, West Virginia uses a two-factor formula which includes property and payroll; Colorado uses a two-factor formula which includes property and sales; Missouri allows for a use of a single factor. Other states such as Connecticut, Florida, New York, Ohio and Wisconsin double weight the sales factor. See "Multistate Corporate Tax Almanac," *supra* note 16, at 183.

21. 622 P.2d 967 (Alaska 1981).

22. *Id.* at 977.

ately weight the property factor and incorporate the use of in-state to out-of-state mileage.

### III. NEXUS

A number of state courts have accepted the argument that pass-through use of a state's highways, without additional contact, is sufficient to establish nexus. An Oregon court agreed with the state's argument that pass through use provides the "economic setting" which contributes towards income production.<sup>23</sup> The same court speculated that the United States Supreme Court would reach the same conclusion. More recently, a Virginia court concluded that "[t]he taxpayer's use of the Virginia highway system, enjoyment of police protection, and like benefits, are sufficient to furnish the requisite nexus for taxation."<sup>24</sup> Furthermore, it may not be necessary to quantify the value of the benefit conferred by the taxing state.<sup>25</sup>

It is clear that the primary nexus issue in the motor carrier industry is whether non-stop use of a state's highways subjects the motor carrier to the taxing jurisdiction of that state. Many states do not have any court decisions dealing with the non-stop use of their highways. They rely upon a combination of administrative rulings or regulations that vary widely from state to state. The result is bound to produce confusion and uncertainty in the motor carrier industry and may lead to industry behavior that produces inefficient, solely tax motivated results. A motor carrier, for example, may decide to extend the length of its route to avoid the possibility of being subject to the taxing jurisdiction of a state.

As seen from a state survey conducted by the authors in Appendix A, the states have taken a variety of positions with respect to motor carrier nexus. On one end of the spectrum are states which have specifically announced, whether by statute, regulation, or ruling, that non-stop use of their highways will not establish nexus. The rationale is that non-stop use does not constitute doing business in the state. For example, an Indiana regulation provides that "[i]ncome from transportation between a point in Indiana and a point outside Indiana, or from outside Indiana into and across the state to a point outside Indiana is not taxable."<sup>26</sup> However, based upon the benefits conferred argument, there appear to be no Constitutional barriers to states imposing an income tax on pass-through use

23. See, e.g., *American Refrigerator Transit Co. v. State Tax Commission*, 395 P.2d 127 (1964). For a contrary view see *Kentucky Tax Commission v. American Refrigerator Transit Co.*, 294 S.W.2d 554 (Ky. 1956).

24. *Commonwealth v. McAdams*, 227 Va. 548, 555, 317 S.E.2d 788, 792 (1984).

25. *Id.* (citing *Standard Pressed Steel Co. v. Washington*, 419 U.S. 560, as S. Ct. 706, 42 L. Ed. 2d 719 (1975)).

26. Ind. Reg. 6-2-1-7(a) (060)a.

of their highways by motor carriers.<sup>27</sup>

On the other end of the spectrum are states which, primarily through administrative interpretations or rulings, have taken the position that non-stop use of state highways in a regular and continuing manner is sufficient to constitute "doing business" as defined by statute. For example, as noted in Appendix A, Ohio and Minnesota, have recently adopted such a position. Some states indicate that they do not have any cases, rulings, or decisions relating to interstate motor carriers, yet they argue, based upon a literal reading of their statutory definition of "doing business," that non-stop use of their highways is included in that definition. Iowa is such a state. In Iowa, "[t]he term "doing business" is used in a comprehensive sense and include(s) *all activities or any transactions* for the purpose of financial or pecuniary gain or profit"<sup>28</sup> (emphasis added).

Somewhere in the middle of the spectrum are states which have adopted a "de minimus" nexus standard such as that recently proposed by the Multistate Tax Commission. Its proposal does not require income apportionment to a state if a trucking company 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 miles within this state; provided that the total mobile property miles traveled within this state during the income tax year does not exceed 3 percent 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.<sup>29</sup>

As shown on Appendix A, Virginia and Idaho have adopted a similar position with some modification. Virginia, for example, has increased the minimum miles to 50,000 Virginia miles, and the percentage of Virginia miles to total miles to not more than 5 percent. The number of round trips (12) into Virginia is the same.<sup>30</sup>

Interstate motor carriers who use a state's highways, whether pass-through or otherwise, derive some benefit or economic advantage from that state. At the very least, the state has provided a necessary bridge from one point to another. Therefore, the states generally have by case, statute, regulation, ruling or policy concluded that nexus exists even for limited use of their highway system. (As noted above, even those states

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27. See *supra* notes 9, 16-18 and accompanying text. Similarly, the Department of Revenue in Pennsylvania has established policy that does not subject to corporate taxation pass through motor carriers but, based upon *Complete Auto Transit, Inc. v. Brady, Inc.*, 430 U.S. 274, 97 S. Ct. 1076, 51 L. Ed. 2d 326, *reh'g denied*, 430 U.S. 976, 97 S. Ct. 1669, 52 L. Ed. 2d 371 (1977), it believes that it has the right to do so.

28. IAC 730-52.1(1)a.

29. Multistate Tax Commission Proposed Trucking Regulation, Reg. IV.18.(g).(5)a.

30. Virginia Reg. § 630-3-417.B.

that do not choose to tax such use clearly recognize they have the right to do so.) It seems reasonable to conclude that even though nexus theoretically exists in every case of pass-through use, practical limitations dictate some form of "de minimus" exception. The Multistate Tax Commission ("Multistate") and Virginia approaches are good examples. They serve in part to reduce the tax compliance and other costs for the small or occasional user who would not benefit extensively from the taxing state. On the other hand, the more substantial user presumably receives a larger proportionate benefit for which payment should be made. And at the very least, they establish a definite basis for establishing nexus.

There appears to be no sound rationale for choosing between the Virginia and Multistate "de minimus" standards except for the obvious fact that motor carriers would prefer the former and states the latter. An argument can be made, however, for lower standards in states which have high maintenance costs and relatively extensive road networks and, conversely, higher standards for states which have low maintenance costs and relatively small road networks.

#### IV. APPORTIONMENT

It is clear from Appendix B that most of the states apportion business income from interstate motor carriers by applying the standard three factor formula (property, payroll and sales). It is also apparent that without modification, even if uniformly applied by all the states, distortion could easily result. For example, as pointed out by the authors of a recent article questioning the use of a three factor formula,

if a company has \$1 million of property in State A, \$1 million of payroll in State B, and \$1 million of sales in State C, it is merely coincidence if one-third . . . of the company's income is economically "earned" in each state.<sup>31</sup>

For the motor carrier industry, the problem is magnified because the property and payroll factors are literally mobile and as a result, it becomes difficult to ascertain with any certainty exactly where a company's income is "economically earned."

To take the characteristics of the motor carrier industry into account, many states have opted for a one factor mileage formula. In Florida, for example, the income attributable to transportation services is apportioned to that state by multiplying the adjusted federal income by a fraction, the numerator of which is the "revenue miles" within Florida and the denominator of which is the "revenue miles" everywhere. Florida defines a revenue mile as the transportation of one passenger or one net ton of freight a

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31. See Brown, Leegstra and Looram, *Unitary Tax: At the Crossroads?*, 3 J. St. Tax 237, 246 (1985) where the authors use the same example and note that "as a measure of productivity (i.e., income) the reasonableness of the formula breaks down when the various steps in the production/distribution/marketing stream are separated.



distance of one mile for consideration.<sup>32</sup> Using an extreme example, the obvious problem with such a formula is that if a company was headquartered in a neighboring state where all of its property and personnel were located, and 90 percent of its road use was in Florida, Florida would allocate to itself 90 percent of adjusted federal income.

As noted in Appendix B, most of the states apportion interstate motor carrier income based upon a three-factor formula subject to a variety of modifications relating directly to highway use (i.e., revenue miles, freight miles, ton miles or some other term denoting distance traveled). In general, states using the three-factor formula, subject to variations, treat each of the factors as follows:<sup>33</sup>

#### *THE PROPERTY FACTOR*

Fixed properties such as buildings, land, terminal facilities, equipment, and trucks and cars used locally are assigned at cost to the state in which such facilities are located. The cost of movable equipment used in interstate transportation is assigned to the taxing state based upon total miles traveled in the state to total miles traveled everywhere. Rented property is sometimes valued at some multiple of its rental rate. Due to a lack of uniformity many problems are apparent among the states. Two such problems are methods of valuing property (cost, adjusted cost, average cost, fair market value) and the rate at which rented property is to be capitalized if indeed it is to be capitalized (some states and the Multistate Tax Commission Trucking Regulation proposal use a multiple of 8).

#### *PAYROLL FACTOR*

Compensation of employees assigned to fixed locations within the state is assigned to that state. Compensation of employees operating interstate transportation equipment is assigned to the taxing state based upon miles traveled in that state in relation to miles traveled everywhere. The Multistate Tax Commission Trucking Regulation proposal divides payroll connected to interstate transportation based upon the "ratio which mobile property miles in the state bear to the total mobile property miles." A "mobile property mile" is defined as "the movement of a unit of mobile property a distance of one mile whether loaded or unloaded."<sup>34</sup> The states generally do not make a distinction between loaded and unloaded miles.

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32. FLA. STAT. § 214.72(2)(a).

33. For examples of the property, payroll and sales factors discussed below, see for Ohio, Special Instruction 21 to O.R.C. Sections 5733.05 and 5733.07. For Idaho, Idaho Reg. 27.4.18.g. For New Jersey, N.J.A.C. 18:7-8.10. And for Indiana, Inc. Reg. 6-3-2-2(1) (020).

34. Multistate Tax Commission Proposed Regulation, Reg. IV.18.(g).(3). (ii).B.3. and 18 IV.18.(g).(3).(ii).c.

*SALES FACTOR*

The sales factor used by states which apply the three-factor formula appears to be fairly uniform. Revenues from transportation are assigned to a state based on the total miles traveled in that state in relation to total miles traveled everywhere.

At the state level, it appears that use of a three-factor formula modified by miles traveled in the taxing state to miles traveled everywhere is the preferred method of apportioning business income from interstate motor carriers. However, even within that context, distortion can easily occur. For example, different factors are given different weights, property may be valued differently, etc. What is clear is that there is a need perceived by both the states and the business community to resolve this problem. The sentiments of the business community are discussed in the following sections of this article.

## V. MOTOR CARRIER VIEWS

*SURVEY METHODOLOGY*

In April 1987, a questionnaire was mailed to 500 randomly selected motor carriers to ascertain their views about nexus standards, apportionment formulas, and compliance issues. All Class I and II motor carriers of property on file with the ICC, except for the five categories of motor carriage engaged mostly in intrastate operations, constituted the population of interest. The five categories are as follows: dumping, armored service, retail store delivery, local delivery service, and hauling ores (not including coal). Altogether, the carriers excluded represent less than 2 percent of the Class I and II carriers on file.<sup>35</sup>

A stratified random sample was taken by sorting the population of carriers into the nine American Trucking Association's regions and then selecting a random sample from each region.<sup>36</sup> The proportional allocation method was used to determine the sample size of each group.<sup>37</sup> To address the problem of nonresponse bias, a second questionnaire was sent to the carriers that did not respond within the first four weeks.

A total of 134 usable questionnaires were returned for a response rate of 27 percent. The first and second mailings produced 110 and 24 responses, respectively. An analysis of the two sets of responses, which included standard statistical tests, revealed no substantive differences. This result, as well as the exploratory nature of the survey, allays con-

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35. AMERICAN TRUCKING ASSOCIATION, EXECUTIVE AND OWNERSHIP REPORT: CLASS I AND II MOTOR CARRIERS OF PROPERTY 1986 (1986).

36. *Id.* at ii-iii.

37. W. MENDENHALL, ELEMENTARY SURVEY SAMPLING 64 (1971).

cerns about nonrespondents having different views and provides the rationale for consolidating both sets of responses for the analysis.

### FINDINGS

Table 1 presents a profile of operating characteristics for the carriers

TABLE 1. PROFILE OF MOTOR CARRIERS SURVEYED

Characteristic	Population (%)*	Respondents (%)+
<u>Region</u>		
1	4.7	1.6
2	18.2	19.0
3	17.1	9.5
4	17.9	15.9
5	6.5	15.9
6	8.8	12.7
7	9.6	6.3
8	5.2	6.3
9	12.0	12.7
<u>Class</u>		
I	41.4	48.0
II	58.6	52.0
<u>Legal Form</u>		
Common	88.9	88.9
Contract	11.1	11.1
<u>Commodity</u>		
Agricultural commodities	4.5	6.3
Building materials	6.1	4.8
Forest products	0.9	3.2
General freight	38.8	33.3
Heavy machinery	3.7	4.8
Household goods	4.7	6.3
Liquid petroleum products	7.2	7.9
Refrigerated liquidated products	0.3	1.6
Refrigerated solid products	6.3	3.2
Specific commodities	27.5	28.6

\*Population (N) = 1,812

+Responses (n') = 134

that responded to the questionnaire in relation to the entire population of carriers. The sample carriers appear to offer a representative cross-section of the different regions, as well as the other groupings shown in the table.

*Importance of the State Income Tax Issue.* Table 2 shows that 80

TABLE 2. HOW IMPORTANT IS THE STATE INCOME/FRANCHISE TAX ISSUE TO YOUR COMPANY?

Importance	Percent of Respondents
Extremely important	36
Very important	44
Neither important or unimportant	11
Not very important	8
Unimportant	1

percent of the respondents believe the state income/franchise tax issue is either very important or extremely important to their companies. Relatively few (9 percent) indicated the issue was not very important or was unimportant, while the rest of the respondents (11 percent) were neutral.

Despite the importance of this tax issue to the sample carriers, a large majority (79 percent) indicated they would not modify routes to avoid certain states that tax interstate operations. The other 21 percent said they would avoid certain states, citing in particular: Colorado, Illinois, Indiana, Michigan, Montana, Ohio, Pennsylvania, New York, and Virginia. The respondents, however, were almost evenly split (47 percent "yes") on the question of whether the income tax issue is a significant element in planning the location of terminals or the scope of operations.

When the motor carriers were asked if the Multistate Tax Commission "de minimus"<sup>38</sup> standards were acceptable, 53 percent said "yes", 47 percent said "no." None of the respondents criticized the first part of the formula (property). Some carriers recommended changes to the second part (pickup/delivery), but most comments focused on part three (travel).

Several carriers raised strong objections to the use of the word *any* in the second part of the formula that says "makes any pick-ups or deliveries within this state." These carriers argued that "any" is inconsistent with the notion of "substantial" nexus. For example, only one pickup or delivery should not constitute substantial nexus. It was recommended that pickups or deliveries should exceed a certain threshold to establish nexus, such as 3 percent of the total.

The respondents' comments about the third part of the formula, which addresses the issue of travel in a state, questioned the appropriateness of the travel factor, the measure of travel, and the threshold levels. The respective recommendations included: (1) the elimination of the travel factor altogether, because nexus standards ought to apply only in the states where a carrier has offices and terminals; (2) the substitution of

38. Alan Friedman, Report of the Hearing Officer Re: Proposed Trucking Regulation (undated manuscript) (Boulder, Colorado, Multistate Tax Commission).

either ton-miles or revenue-miles for mobile-property miles to obtain a more accurate measure of the level of activity in a state; and (3) the use of higher thresholds for "substantial" nexus—specifically, raising 25,000 mobile property miles in a state to a 100,000 threshold and increasing the 3 percent threshold of total mobile property miles traveled in all states to 5 percent.

*Apportionment.* As previously discussed, the Multistate Tax Commission has recommended a three-factor formula for apportioning business income attributable to a state for tax purposes. The three factors are property, payroll, and sales (revenue).

A slight majority (52 percent) of the respondents found the apportionment formula acceptable and offered no comments. The main thrust of the commentary by the 48 percent of the carriers that responded was to eliminate the three-factor approach and replace it with a simplified mileage type formula. In addition, the respondents voiced several other concerns as follows:

(1) The revenue factor would permit multiple taxation of the same revenues. Suppose, for example, that an interstate motor carrier earns \$100 for a 500 mile shipment in parts of states A (200 miles) and B (300 miles) and that a 3 percent tax rate exists for both states. Multiple taxation would occur if both states levied the 3 percent tax on the total revenue (\$100), rather than first apportioning that revenue, say, in direct proportion to the miles traveled in the state (40 percent for A and 60 percent for B).

(2) The use of "pass-through" miles in the measure of mobile property miles will increase the tax level or exposure. This concern appears to involve a misconception. Pass-through miles affect the percentage of the total taxable income apportioned to a state. If all states have the same tax rate, a carrier's tax liability is not affected by the inclusion or exclusion of pass-through miles. With nonuniform tax rates, the inclusion of pass-through miles in the mileage formula may actually *decrease* the carrier's total tax liability. For example, a high proportion of pass-through miles in a state with low tax rates will reduce a carrier's total tax liability.

(3) The revenue taxed by a state should relate directly to the revenue earned in that state and not to the revenue earned outside of that state. For example, windfall earnings generated in State A should not be subject to taxation in State B, unless there is a direct connection between activities in State B and the windfall. The problem, then, is how to measure taxable revenue directly attributable to a state.

(4) The mileage formula permits double taxation of operations since carriers pay fees for miles traveled on turnpikes, while also counting those miles in a mileage based apportionment formula. Ordinary citizens,

however, must pay state income taxes, as well as fees, when using turnpikes.

*Compliance.* The carriers' comments about compliance underscored four key issues. First, the respondents clearly indicated that the lack of uniformity in nexus standards and apportionment formulas was the most important single issue. The specific problem areas cited were: (1) the definition of state taxable income, (2) the difference in filing dates and extensions, and (3) the task of calculating estimated payments.

Second, the respondents expressed reservations about recordkeeping difficulties, especially for (1) measuring and "tracking" intrastate vehicle miles, (2) measuring the value of leased equipment in the property factor when using owner-operators, and (3) keeping separate books. When asked if they keep separate sets of books to distinguish between interstate and intrastate revenues, 53 percent of the carriers said "no" and 47 percent said "yes."

Third, there was concern about the complexity of the three-factor apportionment formula and the lack of uniformity of provisions among the states. Fourth, some respondents thought many small operators would not comply and would escape detection. They noted that enforcement would be difficult for states when dealing with individual truckers or independent contractors.

## VI. CONCLUSIONS

Recent case law has virtually eliminated previous Constitutional barriers to the imposition of income taxes on interstate motor carriers. As the states have moved into this new tax territory, they have created many different paths to nexus standards and apportionment formulas. The resulting patchwork of standards and formulas is the principal reason why motor carriers identified this as one of the major problems in the state taxation of motor carrier income.

As a number of courts have recognized, the problem can only be resolved by effective legislation that, ideally, will be adopted by all the states. Competing interests—both among the states and between the states and the motor carrier industry—make it unlikely for any legislative model to satisfy all parties. Nonetheless, it appears that all parties are in basic agreement that a reasonable "de minimus" standard is required. It also appears that a three-factor formula is preferred. Regardless of what method or formula is adopted, the key is uniformity, if for no other reasons than to simplify compliance responsibilities, reduce costs, and to create certainty.

APPENDIX A

[The information contained in Appendix A represents a compilation of responses by the states to an "Interstate Motor Carrier State Income/Franchise Tax Questionnaire" prepared by the authors and dated September 30, 1985. The citations and other information presented is as received from the states.]

I. With respect to an out-of-state (foreign) motor carrier, which of the following, if any, is sufficient to establish nexus for purposes of imposing your state income and/or franchise tax:

	(1) Non-stop (passing-through) use of your state highways	(2) Minimal use of your highways	(3) Interstate pickups and/or deliveries	(4) Intrastate pickups and deliveries in conjunction with interstate activities	(5) Some combination of questions (1)-(4)	(6) Some other activity	(7) Explanations for questions (1)-(6)
Alabama	Yes	No	Yes	Yes	No	No	—
Alaska	—	—	—	—	—	—	—
Arizona	—	—	—	—	—	—	—
Arkansas	No	No	Yes	Yes	Yes	Yes	(5) Any combination of (1)-(4). (6) Any activity other than the mere solicitation of orders or passing through on highways. (1)-(4) Depends upon economic rather than physical relationship, i.e., has California provided the economic setting out of which taxpayer can reap a profit.
California	Yes	Yes	Yes	Yes	—	—	—

APPENDIX A (continued)

	(1) Non-stop (passing-through) use of your state highways	(2) Minimal use of your highways	(3) Interstate pickups and/or deliveries	(4) Intrastate pickups and deliveries in conjunction with interstate activities	(5) Some combination of questions (1)-(4)	(6) Some other activity	(7) Explanations for questions (1)-(6)
Colorado	No	No	No	Yes	No	Yes	(3) Other than in Colorado. (6) Conducting business through a Colorado office.
Connecticut	No	No	No	No	No	No	(3)-(4) Depends on regularity and frequency, and whether done in conjunction with other activities.
Delaware	No	No	Yes/No	Yes/No	—	—	(3)-(5) Based upon response to a questionnaire where facts and circumstances are evaluated on a case-by-case basis.
Florida	No	No	Yes	Yes	Yes	No	(3)-(4) Pickup and/or deliveries within Georgia.
Georgia	No	No	Yes	Yes	N/A	—	(2) 50,000 or more miles in Idaho or Idaho mileage is 5% or more of total mileage.
Idaho	Yes	Yes	Yes	Yes	—	Yes	(6) Any activity without the scope of 15 U.S.C. Section 381 (Public Law 86-272).
Illinois	—	—	—	—	—	—	—



APPENDIX A (continued)

	(1) Non-stop (passing-through) use of your state highways	(2) Minimal use of your highways	(3) Interstate pickups and/or deliveries	(4) Intrastate pickups and deliveries in conjunction with interstate activities	(5) Some combination of questions (1)-(4)	(6) Some other activity	(7) Explanations for questions (1)-(6)
Indiana	No	Yes	Yes	Yes	Yes	—	(2)-(3) Taxable for adjusted gross and supplemental net income. Number of minimum miles in (2) not specified. Indiana Reg. 6-3-2(b)(020) and 6-3-2-2(1)(020). (4) Taxable for gross, adjusted gross and supplemental income. Indiana Reg. 6-2-1-7(a)(060). (5) Interstate pickups and/or deliveries subject to adjusted gross income and supplemental net income tax.
Iowa	Yes	—	Yes	Yes	—	—	(1)-(4) Based upon Department of Revenue determination.

APPENDIX A (continued)

	(1) Non-stop (passing-through) use of your state highways	(2) Minimal use of your highways	(3) Interstate pickups and/or deliveries	(4) Intrastate pickups and deliveries in conjunction with interstate activities	(5) Some combination of questions (1)-(4)	(6) Some other activity	(7) Explanations for questions (1)-(6)
Kansas	No	Yes	Yes	Yes	N/A	N/A	(2) Requires interstate motor carrier to avail itself of Kansas services and benefits. The relevant inquiry is whether the carrier actually stopped in Kansas.
Kentucky	No	No	Yes	Yes	No	No	(3)-(4) Requires interstate motor carrier to have either: (1) a legal or commercial domicile in Kentucky, or (2) own or lease property or have an employee in Kentucky. The interstate or intrastate pickup or delivery of goods within Kentucky are sufficient to meet the jurisdictional test KRS 141.040.
Louisiana	Yes	No	Yes	Yes	Yes	No	(5) Any combination.

APPENDIX A (continued)

	(1) Non-stop (passing-through) use of your state highways	(2) Minimal use of your highways	(3) Interstate pickups and/or deliveries	(4) Intrastate pickups and deliveries in conjunction with interstate activities	(5) Some combination of questions (1)-(4)	(6) Some other activity	(7) Explanations for questions (1)-(6)
Maine	Yes	No	Yes	Yes	Yes	Yes	(1), (3), (4)-(5) Yes, if regular or frequent presence in the state as opposed to casual or occasional use of state roads. Regular or frequent is when at least 12 trips are made into Maine in a period of 12 months or less of business operation.
Maryland	No	No	Yes	Yes	No	Yes	(6) Ownership or rental of tangible property located in Maine. (5) Once deliveries or pickups are made, the carrier has established nexus. (6) If the motor carrier owns property in Maryland, and if an individual is soliciting sales in Maryland.

APPENDIX A (continued)

	(1) Non-stop (passing-through) use of your state highways	(2) Minimal use of your highways	(3) Interstate pickups and/or deliveries	(4) Intrastate pickups and deliveries in conjunction with interstate activities	(5) Some combination of questions (1)-(4)	(6) Some other activity	(7) Explanations for questions (1)-(6)
Massachusetts	No	No	Yes	Yes	Yes	Yes	(5) Owning or renting property such as a warehouse. (6) Qualifying to carry on or do business in Massachusetts or exercising of the corporate charter MGL Ch. 63 Section 39.
Michigan Minnesota	— Yes	— Yes	Yes Yes	Yes Yes	Yes Yes	— N/A	(2) No arbitrary minimum. (5) Any combination of (1)-(4). (6) Terminals in Minnesota would establish nexus.
Mississippi	No	No	Yes	Yes	No	No	(3)-(4) Based upon "doing business" in Mississippi which in part means "(t)he regular rendering of service to clients or customers in Mississippi." State Tax Commission § 27-7 7-23(D).
Missouri	No	Yes	Yes	Yes	Yes	Yes	(2) No minimum. (5)-(6) Varied.

APPENDIX A (continued)

	(1) Non-stop (passing-through) use of your state highways	(2) Minimal use of your highways	(3) Interstate pickups and/or deliveries	(4) Intrastate pickups and deliveries in conjunction with interstate activities	(5) Some combination of questions (1)-(4)	(6) Some other activity	(7) Explanations for questions (1)-(6)
Montana	Yes	Yes	Yes	Yes	—	—	(2) No minimum total miles requirement.
Nebraska	Yes	Yes	Yes	Yes	Yes	Yes	(2) Assumes routine continual contact with Nebraska. (5) Any combination of (1)-(4). (6) Any activity in Nebraska from which income is derived unless otherwise exempted by federal statute.
Nevada	N/A	N/A	N/A	N/A	N/A	N/A	Does not assess an income or franchise tax.
New Hampshire New Jersey	— No	— —	— Yes	— Yes	— —	— —	(6) Doing business, employing or owning capital or property or maintaining an office in the state N.J.S.A. 54:10A-2.

APPENDIX A (continued)

	(1) Non-stop (passing-through) use of your state highways	(2) Minimal use of your highways	(3) Interstate pickups and/or deliveries	(4) Intrastate pickups and deliveries in conjunction with interstate activities	(5) Some combination of questions (1)-(4)	(6) Some other activity	(7) Explanations for questions (1)-(6)
New Mexico	No	No	Yes	Yes	—	Yes	(1)-(2) If multistate tax commission proposed trucking regulation is approved and adopted, New Mexico would answer questions (1) and (2) yes. (6) Resident employees maintain warehouse contracting agent, broker or representative within New Mexico, or other facilities within the state.
New York	No	No	Yes	Yes	No	Yes	(6) Property in state. New York Tax Law Ch. 60, Art. 9, Sec. 183 and 184.
North Carolina	—	—	Yes	Yes	—	—	—
North Dakota	Yes	Yes	Yes	Yes	No	No	—

APPENDIX A (continued)

	(1) Non-stop (passing-through) use of your state highways	(2) Minimal use of your highways	(3) Interstate pickups and/or deliveries	(4) Intrastate pickups and deliveries in conjunction with interstate activities	(5) Some combination of questions (1)-(4)	(6) Some other activity	(7) Explanations for questions (1)-(6)
Ohio	Yes	Yes	Yes	Yes	—	—	(1)-(2) Although the question is currently under review, Ohio appears to adopt the position that use of its highways as a "bridge" state probably does not discriminate against interstate commerce. Doing business, or owning or using property in Ohio, or holding a certificate of compliance is sufficient contact. ORS Sec. 5733.01.
Oklahoma	No	No	Yes	Yes	Yes	Yes	(5) If both interstate and intrastate activities are carried on, this would be a sufficient nexus. (6) Where a company utilizes some method of local distribution.

APPENDIX A (continued)

	(1) Non-stop (passing-through) use of your state highways	(2) Minimal use of your highways	(3) Interstate pickups and/or deliveries	(4) Intrastate pickups and deliveries in conjunction with interstate activities	(5) Some combination of questions (1)-(4)	(6) Some other activity	(7) Explanations for questions (1)-(6)
Oregon	Yes	Yes	Yes	Yes	Yes	—	(1)-(5) Each of these activities would be sufficient to constitute "doing business" in Oregon for income tax purposes. ORS 150-318.020(2).
Pennsylvania	No	No	Yes	Yes	Yes	No	(5) Some combination of nonstop (passing-through) Pennsylvania and either interstate pickups and/or deliveries or intrastate pickups and deliveries in conjunction with interstate activities. 72 P.S. § 7401.
Rhode Island	No	No	Yes	Yes	N/A	N/A	—
South Carolina	No	No	No	Yes	No	Yes	(6) Terminal located within the state.
South Dakota	N/A	N/A	N/A	N/A	N/A	N/A	Does not assess a personal or corporate income tax.
Tennessee	No	No	No	Yes	Yes	Yes	—
Texas	No	No	No	Yes	Yes	Yes	(5) Only interstate activities with pickup and delivery in Texas.



APPENDIX A (continued)

	(1) Non-stop (passing-through) use of your state highways	(2) Minimal use of your highways	(3) Interstate pickups and/or deliveries	(4) Intrastate pickups and deliveries in conjunction with interstate activities	(5) Some combination of questions (1)-(4)	(6) Some other activity	(7) Explanations for questions (1)-(6)
Texas (cont.)							
Utah	Yes	Yes	Yes	Yes	Yes	—	(6) Terminal warehouses or office facilities in Texas. (2) Mileage important only as it relates to apportionment formula. (5) Any activity.
Vermont	No	No	No	Yes	—	No	(2) Lesser of 50,000 miles or 5% of total miles and no more than twelve round trips into Virginia.
Virginia	Yes	Yes	Yes	Yes	Yes	Yes	(5) Twelve round trips into Virginia. (6) Ownership of any real or tangible property (except vehicles) located in Virginia Code § 58.1-417, Virginia Reg. § 630-3-417.

APPENDIX A (continued)

	(1) Non-stop (passing-through) use of your state highways	(2) Minimal use of your highways	(3) Interstate pickups and/or deliveries	(4) Intrastate pickups and deliveries in conjunction with interstate activities	(5) Some combination of questions (1)-(4)	(6) Some other activity	(7) Explanations for questions (1)-(6)
Washington	N/A	N/A	N/A	N/A	N/A	N/A	Does not assess an income or franchise tax.
Washington, D.C.	No	No	No	Yes	Yes	Yes	(3) As long as there is no originating traffic point, connecting traffic point, terminating traffic point, or transfer to a connecting carrier within the District.
West Virginia	No	No	Yes	Yes	Yes	Yes	(5) As long as there is an originating traffic point, connecting traffic point, terminating traffic point as transfer to a connecting carrier within the District. (6) Receiving income from District sources. (6) Interstate transportation in conjunction with "minimal activities" in West Virginia.

APPENDIX A (continued)

	(1) Non-stop (passing-through) use of your state highways	(2) Minimal use of your highways	(3) Interstate pickups and/or deliveries	(4) Intrastate pickups and deliveries in conjunction with interstate activities	(5) Some combination of questions (1)-(4)	(6) Some other activity	(7) Explanations for questions (1)-(6)
Wisconsin	No	No	Yes	Yes	Yes	No	(5) Interstate and intrastate pickups and deliveries. Must exceed minimum standards of Public Law 86-272. Wisconsin Tax Bulletin # 36, p. 15. Does not impose any form of income tax.
Wyoming	N/A	N/A	N/A	N/A	N/A	N/A	

APPENDIX B

[The information contained in Appendix B represents a compilation of responses by the states to an "Interstate Motor Carrier State Income/Franchise Tax Questionnaire" prepared by the authors and dated September 30, 1985. The citations and other information presented is as received from the states.]

II. If nexus is established, apportionment of total business income from an interstate motor carrier operation is accomplished through:

	(1)			How Weighted	(2)	(3)	(4)
	An apportionment which includes:	Property	Sales				
Alabama	Yes	Yes	Yes	—	Yes	No	(1) Only if all are present. (2) Most frequently used method.
Alaska	—	—	—	—	—	—	—
Arizona	—	—	—	—	—	—	—
Arkansas	Yes	Yes	Yes	Equally	Yes	—	(2) When carrier has taxable nexus in Arkansas without situs or tangible assets there.
California	Yes	Yes	Yes	Equally	—	—	(1) Property and payroll factors based upon "ton miles" or "actual miles." Sales factor based upon "revenue miles" per informal audit guidelines.
Colorado	Yes	Yes	Yes	Equally	No	No	(1) Taxpayer can make an election between two formulas: a two factor formula (property and sales) or a three factor formula (payroll, property and sales). C.R.S. 39-22-203.

APPENDIX B (continued)

	(1) An apportionment which includes:			How Weighted	(2) In-state mileage to total mileage	(3) Some other activity	(4) Comment given for questions (1)-(3)
	Payroll	Property	Sales				
Connecticut	Yes	Yes	Yes	Sales Double Weighted	—	—	Applies only where there is an on-going business in Connecticut.
Delaware	Yes	Yes	Yes	Equally	—	Yes	
Florida	N/A	N/A	N/A	N/A	Yes	N/A	(3) Gross receipts tax on deliveries. (2) "Revenue miles" in Florida to "revenue miles" everywhere. F.S. 214.72(2)(a).
Georgia	—	—	—	—	Yes	—	(1) Fixed property and payroll assigned to state where property and employees are located otherwise the factors are based on mileage in Idaho to mileage everywhere. Idaho Reg. 27,41.18.g.
Idaho	Yes	Yes	Yes	—	Yes	—	
Illinois	—	—	—	—	—	—	(1)-(2) Based upon "revenue miles" in Indiana to "revenue miles" everywhere. IC 6-3-2-2(b). Indiana Reg. 6-3-2-2(b) (030) and 6-3-2-2(1)(020).
Indiana	Yes	Yes	Yes	Equally	—	—	

APPENDIX B (continued)

	(1)			(2)	(3)	(4)	
	An apportionment which includes: Payroll	Property	Sales				How Weighted
Iowa	—	—	—	—	Yes	—	(2) Gross receipts or revenues allocated to Iowa based upon "mileage" traveled in Iowa to total "mileage." IAC 730-54.7(2).
Kansas	—	—	—	—	Yes	—	(2) Business income apportioned to Kansas by means of a one factor mileage formula K.S.A. 79-3279.
Kentucky	Yes	Yes	Yes	Sales Double Weighted	Yes	No	(1) Sales based upon "miles operated" in Kentucky to "miles operated" everywhere. Property based upon property in Kentucky to property everywhere. 103 K.A.R. 16.120.

APPENDIX B (continued)

	(1) An apportionment which includes:			How Weighted	(2) In-state mileage to total mileage	(3) Some other activity	(4) Comment given for questions (1)-(3)
	Payroll	Property	Sales				
Louisiana	No	Yes	Yes	—	No	No	(1) Based upon the ratio of the value of immovable and corporeal movable property in Louisiana to the value of immovable and incorporeal movable property everywhere used in the production of apportionable income; and the ratio of the amount of gross apportionable income from Louisiana sources to gross apportionable income everywhere LSA R.S. 47:245(c)(1) & (2). (1) 08-125 CMR 801 Amended. (2) Can be used to determine portion of in-state sales. (3) Costs of performance standard can be used to determine portion of in-state sales. 36 MRSA 5211-16B.
Maine	Yes	Yes	Yes	Equally	Yes	Yes	

APPENDIX B (continued)

	(1) An apportionment which includes:			How Weighted	(2) In-state mileage to total mileage	(3) Some other activity	(4) Comment given for questions (1)-(3)
	Payroll	Property	Sales				
Maryland	Yes	Yes	Yes	Equally	Yes	No	(1)-(2) If substantial property is permanently located in Maryland (terminals, etc.) and there is substantial payroll from Maryland based employees, a three-factor formula is used. If only a small amount of property is permanently located in Maryland and a few employees, a single factor formula based on sales, is used comparing Maryland mileage to total mileage.  (1)-(3) There is currently being drafted a regulation that will more reasonably determine taxable income. It is being drafted pursuant to MGL Ch. 63 Sec. 38(j).  (2)-(3) "Revenue miles" in Michigan to "revenue miles" everywhere. Michigan Compiled Laws, act. No. 208, Sec. 57(1).
Massachusetts	Yes	Yes	Yes	Sales Double Weighted	—	—	
Michigan	—	—	—	—	Yes	Yes	



APPENDIX B (continued)

	(1) An apportionment which includes:			How Weighted	(2) In-state mileage to total mileage	(3) Some other activity	(4) Comment given for questions (1)-(3)
	Payroll	Property	Sales				
Minnesota	Yes	Yes	Yes	—	—	—	(1) Generally, each factor is based upon "miles traveled in Minnesota to miles traveled everywhere." (2) Mississippi "revenue ton miles" to "total revenue ton miles." Mississippi Regs. - Income Tax 1.27-7-23(7)(k)(3). (1)-(2) Generally, each factor is based upon "miles traveled within Montana to total miles traveled everywhere." Admin. Rules of Montana 42.16.1229.
Mississippi	No	No	No	—	Yes	No	
Missouri Montana	Yes Yes	Yes Yes	Yes Yes	— —	Yes Yes	No No	

APPENDIX B (continued)

	(1) An apportionment which includes:			How Weighted	(2) In-state mileage to total mileage	(3) Some other activity	(4) Comment given for questions (1)-(3)
	Payroll	Property	Sales				
Nebraska	Yes	Yes	Yes	Equally	No	No	(2) However, in computing the factors of the apportionment formula, portions of an employee driver's wages and of the value of mobile property, such as a truck, may be assigned to Nebraska based on the number of Nebraska miles to total miles if permission is requested by the taxpayer and permission is granted. Does not assess an income or franchise tax.
Nevada	N/A	N/A	N/A	—	N/A	N/A	—
New Hampshire New Jersey	— Yes	— Yes	— Yes	— Equally	— Yes	— —	(2) Receipts factor based upon "revenue miles" in New Jersey to total "revenue miles." N.J.A.C. 18:7-8.10.
New Mexico	Yes	Yes	Yes	Equally	Yes	—	(2) Used to calculate each of the factors in (1) except for real property owned or rented in New Mexico and for resident employees in which case actual figures are used.

APPENDIX B (continued)

	(1) An apportionment which includes:		How Weighted	(2) In-state mileage to total mileage	(3) Some other activity	(4) Comment given for questions (1)-(3)
	Payroll	Property Sales				
New York	—	—	—	Yes	—	(2) Actual revenue miles within New York to total actual revenue miles within and without New York. TSB-M-82(9)(C).
North Carolina North Dakota	Yes	Yes	Equally	Yes Yes	Yes	(1) The factors are segregated as to mobile and non-mobile. The mileage ratio is applied to drivers' payroll, mobile property, and trucking revenue to assign amounts to North Dakota. Situs payroll, property and sales are added to the amounts determined using the mileage ratio to determine total North Dakota payroll, property and sales, which is then divided by payroll, property and sales everywhere to determine the apportionment factor.

APPENDIX B (continued)

	(1)			How Weighted	(2) In-state mileage to total mileage	(3) Some other activity	(4) Comment given for questions (1)-(3)
	An apportionment which includes: Payroll	Property	Sales				
Ohio	Yes	Yes	Yes	Sales Double Weighted	Yes	No	(1)-(2) All factors can be based upon "total miles traveled" in state to total miles everywhere. ORS 5733.05, Special Instruction Number 21. (1) Payroll: drivers by mileage; property: interstate transportation property by mileage. Sales: interstate mileage to total mileage. (1)-(2) Based on the proportion of "revenue miles" traveled in Oregon to total "revenue miles." OAR 150-314. 280(G). (3) Total "revenue miles" in Pennsylvania to total "revenue miles" everywhere 72 P.S. 7401(3)2.(b)(1) (Supp.). (3) Average inbound/outbound revenue. —
Oklahoma	Yes	Yes	Yes	—	Yes	No	
Oregon	Yes	Yes	Yes	Equally	Yes	—	
Pennsylvania	No	No	No	—	No	Yes	
Rhode Island	Yes	Yes	Yes	Equally	No	Yes	
South Carolina	No	No	No	—	Yes	No	

APPENDIX B (continued)

	(1) An apportionment which includes:			How Weighted	(2) In-state mileage to total mileage	(3) Some other activity	(4) Comment given for questions (1)-(3)
	Payroll	Property	Sales				
South Dakota	N/A	N/A	N/A	N/A	N/A	N/A	Does not assess a personal or corporate income tax. (1) A common carrier uses an apportionment formula based on the following factors weighted equally: 1. Franchise mileage everywhere to Tennessee mileage. 2. Gross receipts everywhere to gross receipts from operations beginning and ending in Tennessee.
Tennessee	No	No	Yes	—	—	—	

APPENDIX B (continued)

	(1) An apportionment which includes:			How Weighted	(2) In-state mileage to total mileage	(3) Some other activity	(4) Comment given for questions (1)-(3)
	Payroll	Property	Sales				
Texas	Yes	Yes	Yes	Equally	No	Yes	(1) Texas's tax base is capital and surplus as allocated to Texas. Apportionment is permissive and requires prior permission. Texas Franchise Tax Rule 3.393.  (6) Either "total mileage" inside Texas to "total mileage everywhere," or "total mileage" in picking up and delivering goods in Texas to "total mileage everywhere." Texas Franchise Tax Rule 3.403(c)(12)(A).
Utah	Yes	Yes	Yes	Equally	Yes	—	(1)-(2) All factors based upon "total miles" traveled in state to total miles everywhere.
Vermont	Yes	Yes	Yes	Equally	Yes	—	(2) In some cases, a route or revenue mile calculation may be used.
Virginia	No	No	No	—	Yes	No	(2) "Vehicle miles" in Virginia to total "vehicle miles" everywhere. Virginia Code 5581.417; Virginia Reg. 630-3-417.

APPENDIX B (continued)

	(1)			How Weighted	(2)	(3)	(4)
	An apportionment which includes:						
	Payroll	Property	Sales		In-state mileage to total mileage	Some other activity	Comment given for questions (1)-(3)
Washington	N/A	N/A	N/A	N/A	N/A	N/A	Does not assess an income or franchise tax. Motor carriers are subject, however, to a public utilities tax which is applicable only to income derived from intrastate hauling. W.A.C. 458-20-193D.
Washington, D.C.	Yes	Yes	Yes	Equally	Yes	Yes	(2) Property and payroll factors based on in-state mileage to total mileage. Sales factor based on "revenue units." (3) 100% of nonbusiness income from District sources allocated to District.
West Virginia	No	No	No	—	Yes	No	(3) Only transportation activities are subject to the carrier income taxes.

APPENDIX B (continued)

	(1) An apportionment which includes:			(2) In-state mileage to total mileage	(3) Some other activity	(4) Comment given for questions (1)-(3)
	Payroll	Property	Sales			
Wisconsin	—	—	—	—	Yes	(3) Average of two ratios: the ratio of gross receipts from carriage of property first acquired for carriage in Wisconsin to total gross receipts from carriage of property everywhere, and the ratio of "ton miles" of carriage in Wisconsin to "ton miles" of carriage everywhere. Wisconsin Admin. Rule Tax 2.47. Does not impose any form of income tax.
Wyoming	N/A	N/A	N/A	N/A	N/A	