

5703-29-15

Highway transportation services - bright-line presence and situsing.

(A) Pursuant to division (I) of section 5751.01 of the Revised Code, a person is deemed to have "bright-line presence" in this state for purposes of the commercial activity tax if the person meets one of the five tests listed in that section, one being that the person has property in this state with an aggregate value of at least fifty thousand dollars at any time during the calendar year. This rule is to address the application of the property test to highway transportation services.

(B) For purposes of paragraph (A) of this rule, a person providing highway transportation services will be presumed to have at least fifty thousand dollars of property in the aggregate during the calendar year if the person has property of such value in this state for more than thirteen days, which need not be consecutive.

(C) For purposes of paragraph (B) of this rule, "day" means a calendar day or any portion thereof. Multiple trips during the same day do not constitute more than one day.

(D)

(1) Persons providing highway transportation services must situs gross receipts from such services pursuant to division (G) of section 5751.033 of the Revised Code in proportion to the miles traveled by the carrier during the tax period within the state compared with the miles traveled by the carrier during the tax period everywhere. Even if a person has bright-line presence, however, that person must also have at least one hundred fifty thousand dollars in taxable gross receipts in order to be a taxpayer for purposes of the commercial activity tax. That threshold applies to a person who would otherwise be a separate taxpayer or to a group of persons who would otherwise be members of a combined taxpayer group, but does not apply to members of a consolidated elected taxpayer group. Please see Ohio Adm. Rules 5703-29-02 and 5703-29-04 for further clarification on this issue.

(2) For example, assume a widget manufacturer located in Kansas contacts ABC Trucking Company (ABC), a Kansas transportation company, to arrange the transportation of one hundred thousand dollars worth of the manufacturer's widgets to XYZ Retailer (XYZ), located in Pennsylvania. The total trip is nine hundred miles, of which two hundred fifteen miles are traveled in Ohio, and ABC charges the manufacturer ten thousand dollars. ABC loads the widgets onto its trucks in Kansas and drives them through this state to XYZ's Pennsylvania location. ABC's truck is worth eighty thousand dollars, and this is the only trip ABC makes through this state during the calendar year. ABC would not be deemed to have bright-line presence for purposes of the commercial activity tax because ABC is not in this state for more than thirteen days during a calendar year.

If, however, ABC contracted with the widget manufacturer to make

bi-weekly trips to XYZ in Pennsylvania for purposes of transporting the widgets, and ABC drove through this state each trip, ABC would be deemed to have bright-line presence in this state for purposes of the commercial activity tax. It is important to remember, however, that ABC would not be considered a taxpayer subject to the commercial activity tax until ABC has at least one hundred fifty thousand dollars in taxable gross receipts (those gross receipts situated to this state) during the calendar year. If ABC is a combined taxpayer, the entire group must add its taxable gross receipts together to determine if the group reaches the one hundred fifty thousand dollar threshold amount. (Please note that if ABC was a member of a consolidated elected taxpayer group, the one hundred fifty thousand dollar threshold would not apply.) In this example, assuming ABC meets the bright-line standard, ABC's ten thousand dollars of gross receipts would be situated to this state based on the proportion of miles driven within this state compared with miles driven everywhere.

Effective: 08/11/2006

R.C. 119.032 review dates: 08/11/2011

CERTIFIED ELECTRONICALLY

Certification

08/01/2006

Date

Promulgated Under: 5703.14
Statutory Authority: 5703.05
Rule Amplifies: 5751.01(I)