

An aerial photograph of a large, white, arch-shaped bridge spanning a wide river. The surrounding landscape is lush with trees in various shades of green and autumnal colors like yellow and orange. A road with a guardrail runs along the right bank of the river. The sky is not visible, as the view is from directly above.

TRONCONI SEGARRA & ASSOCIATES LLC

Certified Public Accountants
Business Consultants

Destination **USA**

February 8, 2024

David J. Lever, CPA, Partner

Providing *Solutions Beyond the Obvious* since 2007

dlever@tsacpa.com [David Lever | LinkedIn](#)

AREAS OF EXPERTISE:

- Identification and delivery of strategic business and tax solutions for international clients entering or expanding into the United States through start-up or acquisition.
- Addressing U.S. federal, state and local corporate tax implications, international tax structuring and finance opportunities.
- State and local tax strategic business and tax solutions.
- Consulting and compliance for U.S. citizens living abroad.

EDUCATION

- Canisius College, Buffalo, New York
 - Dual Bachelor of Science Degree, Accounting, and Accounting Information Systems

LICENSES/PROFESSIONAL AFFILIATIONS

- Certified Public Accountant (CPA) Licensed in New York State
- American Institute of Certified Public Accountants (AICPA)
- New York State Society of Certified Public Accountants (NYSSCPA)
- Internal Revenue Service (IRS) Certified Acceptance Agent (CAA)



U.S.-Canadian Border Land-Freight Gateways: Number of Incoming Truck or Rail Container Crossings

Embedded Dataset Excel:

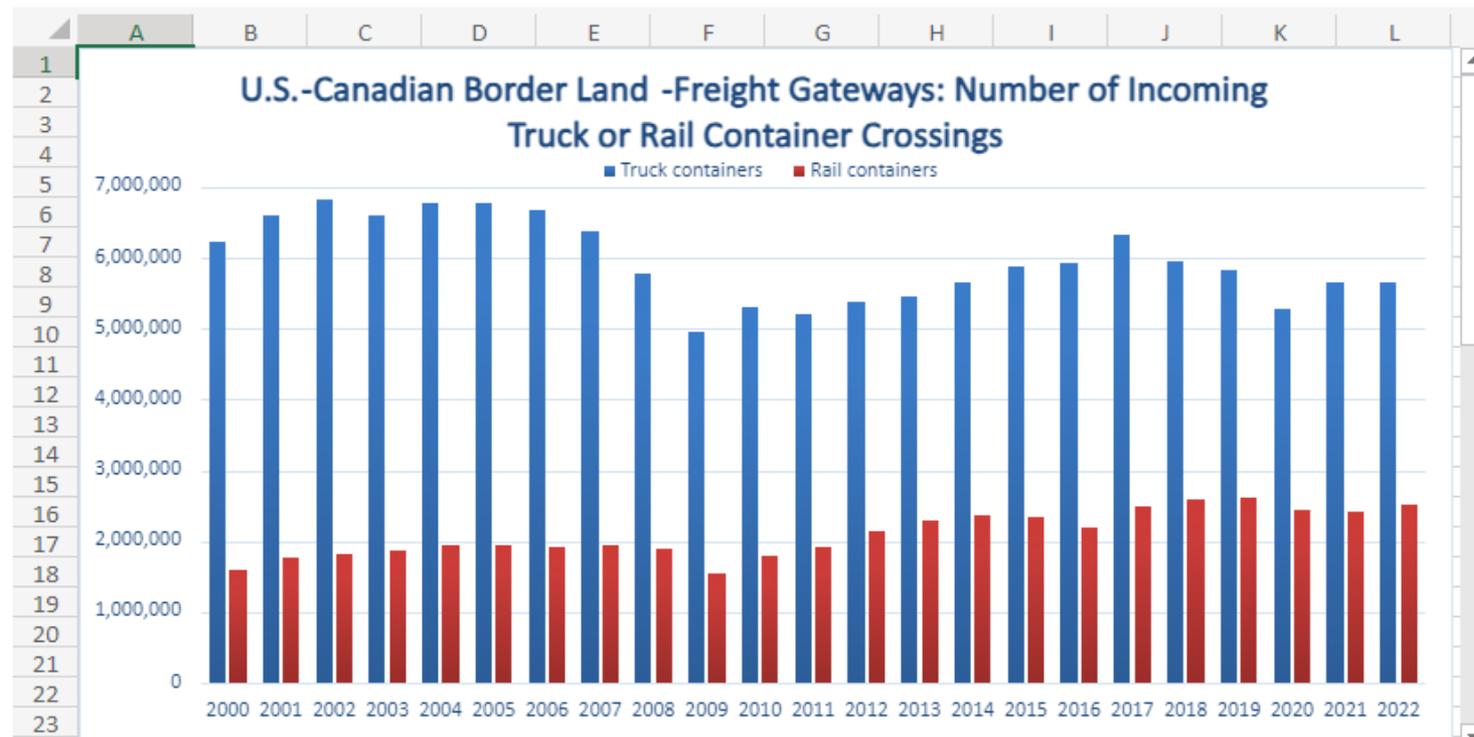


Table 1-52: U.S.-Canadian Border Land-Freight Gateways: Number of Incoming Truck or Rail Container Crossings

Truck containers		2020		2021		2022	
Total U.S.-Canadian border	Total U.S.-Canadian border	5,278,020	Total U.S.-Canadian border	(R) 5,655,124	Total U.S.-Canadian border	5,655,124	
	Total top 5 gateways	3,553,006	Total top 5 gateways	3,869,013	Total top 5 gateways	3,706,803	
	Detroit, MI	1,338,983	Detroit, MI	1,394,304	Detroit, MI	1,380,499	
	Buffalo-Niagara Falls, NY	844,359	Buffalo-Niagara Falls, NY	910,225	Port Huron, MI	883,243	
	Port Huron, MI	734,861	Port Huron, MI	859,257	Buffalo Niagara Falls, NY	778,543	
	Blaine, WA	345,428	Blaine, WA	394,051	Blaine, WA	372,291	
	Champlain-Rouses Point, NY	289,375	Champlain-Rouses Point, NY	311,176	Champlain Rouses Point, NY	292,227	
Rail containers		2020		2021		2022	
Total U.S.-Canadian border	Total U.S.-Canadian border	2,434,102	Total U.S.-Canadian border	2,427,141	Total U.S.-Canadian border	2,525,710	
	Total top 5 gateways	1,809,538	Total top 5 gateways	1,765,094	Total top 5 gateways	1,798,969	
	International Falls, MN	804,978	International Falls, MN	737,843	International Falls, MN	703,433	
	Port Huron, MI	363,621	Port Huron, MI	380,409	Port Huron, MI	438,016	
	Portal, ND	312,850	Portal, ND	296,341	Portal, ND	315,152	
	Blaine, WA	192,309	Blaine, WA	214,475	Blaine, WA	204,866	
	Detroit, MI	135,780	Eastport, ID	136,026	Pembina, ND	137,502	

Source:

U.S. Department of Transportation, Bureau of Transportation Statistics, Border Crossing/Entry Data, available at <https://www.bts.gov/content/border-crossingentry-data> of Jun. 20, 2023.

Federal Tax

- Foreign persons doing business in the U.S. are subject to federal tax on income that is effectively connected with the conduct of a trade or business within the U.S.
- However, the U.S. - Canada Tax Treaty provides that a Canadian company's business profits only are subject to U.S. federal income tax if it creates a Permanent Establishment (PE) in the United States

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Permanent Establishment (PE)

➤ Transportation (Article VIII)

- Goods or passengers transported from a point outside of the U.S. to a U.S. destination does not create a PE
- Backhaul services or return trips originating in the U.S. would constitute a PE
- Point-to-point trips within US is also creates a PE
- Also covers rental of containers, ships, aircraft
- Rental of railway rolling stock, motor vehicles, trailers, or containers does not create a PE if for less than 183 days in 12-month period



Treaty-Based Returns

- A Canadian company conducting business in the U.S. that does not create a PE will not owe Federal income tax
 - File treaty-based Form 1120-F, *U.S. Income Tax Return of a Foreign Corporation* (only the information section); and
 - Form 8833, *Treaty-Based Return Position Disclosure* to report the treaty position that is being relied upon
 - Generally, file Form 1120-F - 5 ½ months after the end of its fiscal tax year (June 15)
 - Requires a U.S. tax identification number (EIN)
 - Statute of limitations clock starts ticking
 - Avoid future penalties and interest on non-filed returns

Treaty-Based Returns (cont'd)

- When a Canadian company has a PE, it should file Form 1120-F, *U.S. Income Tax Return of a Foreign Corporation*, complete all sections of the form and pay the amount of income tax due
 - A Canadian company with a place of business in the U.S. must generally file Form 1120-F - 3 ½ months after the end of its fiscal tax year (April 15)
 - U.S. earnings and profits subject to 5% branch profits tax unless earnings are reinvested into U.S. branch (first \$500k CAD earnings can be repatriated with no branch profits tax)

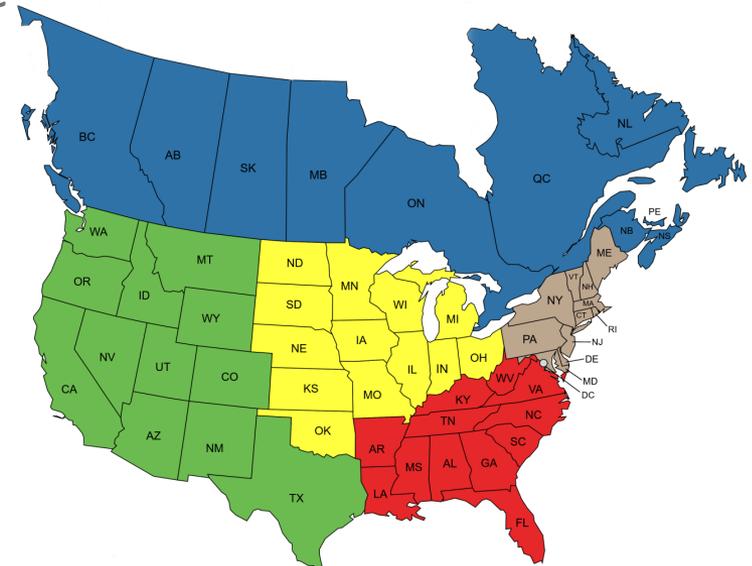
Federal Heavy Highway Use Tax (HUT)



- Excise tax administered by the IRS that applies to vehicles with a GVWR of 55,000 or more
- Proof of compliance requires when vehicle registered with state (stamped Form 2290)
- July-June reporting year, annual filing
- Additional filing due date 1 month after new vehicle is first used on public highways
- Tax suspended if vehicle used less than 5,000 miles

International Fuel Tax Agreement (IFTA)

- 48 contiguous states & Canada
- Vehicles 26,000 GVWR or more and crossing into two or more member states
- License & decal needed per vehicle
- Quarterly reporting



State and Local Tax

- Inbound businesses are often advised they have “treaty protection” for their business activities in the United States
 - Treaty applies to U.S. Federal income taxes only
 - The 50 states are not bound by U.S. tax treaties or permanent establishment rules and may tax foreign companies doing business within their borders
 - A foreign company may have state and/or local gross receipts, income, sales & use, property and payroll tax filing obligations depending on their U.S. business activities

Nexus

- Nexus describes the amount and degree of a taxpayer's business activity that must be present in a state before the taxpayer becomes subject to the State's taxing jurisdiction or power
 - Some definite link, some minimum connection between a state and the person, property, or transaction it seeks to tax
 - States impose differing nexus standards for different types of taxes:
 - Physical presence
 - Economic presence
 - Factor presence

Income Tax

➤ Physical Presence Nexus

- Having a physical presence in a state typically creates nexus, however it is not needed

➤ Economic Nexus

- Some state courts and taxing authorities have applied a test based on an economic connection to the state, while other states have expressly adopted by statute an economic presence standard for income tax purposes

Income Tax (cont'd)

➤ Federal Nexus Limitations

- The Federal Interstate Income Tax Law (P.L. 86-272) prohibits any state from imposing a “net income tax” on income derived within that state from interstate commerce if in-state activity is limited to:
 - Enacted by U.S. Congress in 1959 to provide multistate corporations with a limited safe harbor from imposition of state income taxes
 - “Mere solicitation” of orders for tangible personal property (does not include services or digital property);
 - Provided that the orders are sent outside the state for approval; and
 - Fulfilled by shipment or delivery from a point outside the state
 - Protection may not be afforded to foreign sellers

Does my company have nexus and is the delivery taxable?



Logistics Companies

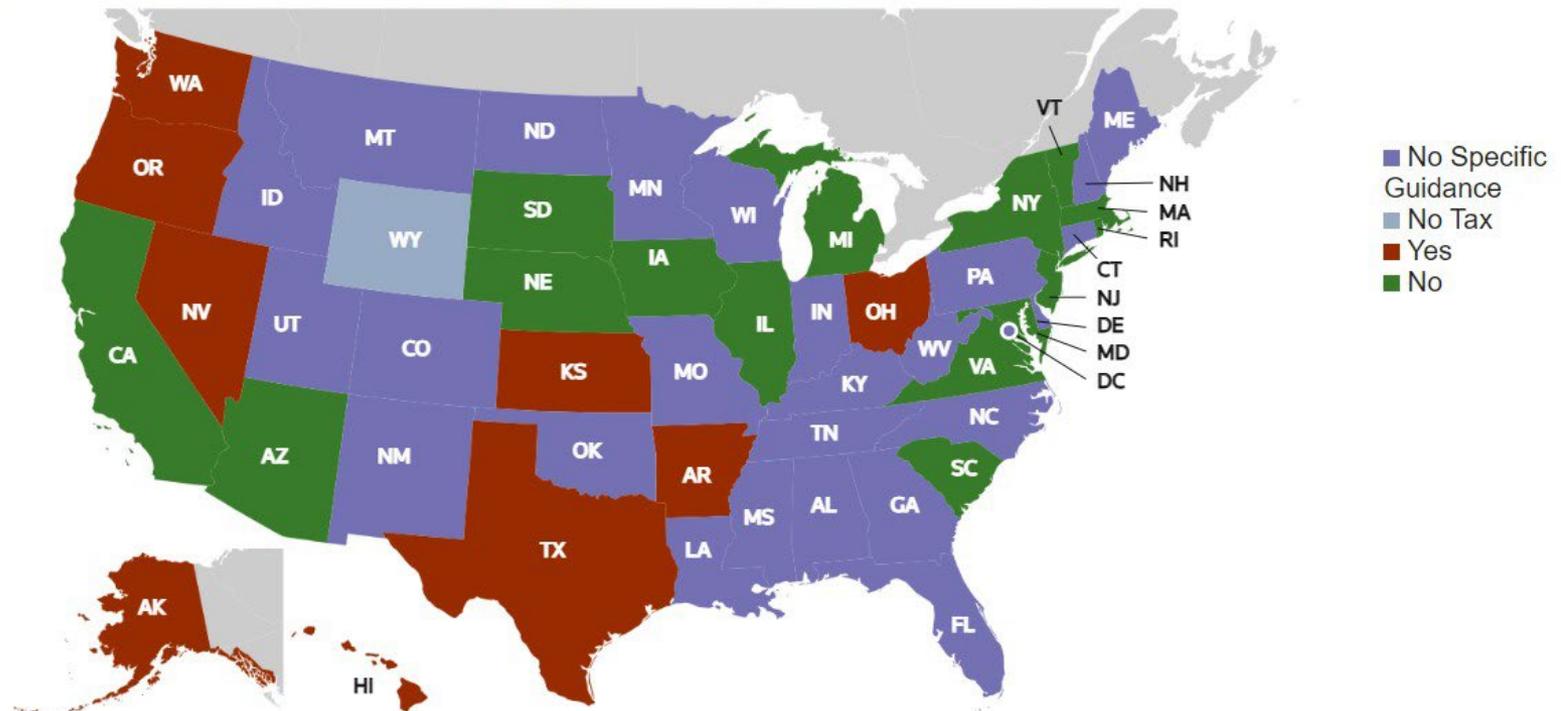
- Use of subcontractors creates nexus
- Look at contracts
 - Does company bear risk of loss?
 - Does company have flash title?

Income Tax (cont'd)

Company Activities: Distribution and Delivery—Delivers Goods in Company Trucks

Tax Type: Corporate Income

If an out-of-state business makes regular deliveries in the state using company-owned trucks, will such activity breach the protection of P.L. 86-272 and create nexus?



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Income Tax (cont'd)

- P.L. 86-272 traps
 - Other activities coupled with delivery can still void 86-272
 - ❖ Installation/Commissioning
 - ❖ Repairs
 - ❖ Training
 - Non-U.S. corporations may not qualify for 86-272 protection

Income Tax (cont'd)

- P.L. 86-272 traps
 - Business can still be subject to minimum taxes or alternative base taxes
 - Ohio Commercial Activities Tax (CAT)
 - Texas Margin Tax
 - Washington Business & Occupations Tax (B&O)
 - California \$800 Fixed Minimum Tax
 - Though these liabilities are minimal, they can add up over the years, especially after you add interest and penalties

Income Tax (cont'd)

- Apportionment formula
 - Most have special rules for trucking/transportation companies
 - Mileage is most common variable to determine sales allocation
 - Market based/cost of performance

- Track origin, destination, mileage

Strategy

- Separate delivery company
 - Unitary concerns
- Use of third-party common carrier
- Unintended nexus created for other divisions, business lines
 - Economic nexus or factor-presence nexus may still apply



Questions

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Contact Information



David J. Lever, CPA

Partner

Tronconi Segarra & Associates

dlever@tsacpa.com

8321 Main Street, Williamsville, New York, 14221

Phone: 716.633.1373 Fax: 716.633.1099

www.tsacpa.com