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U.S. TAX SERVICES



# UNITED STATES TAX SERVICES

Prepared by

**Welch LLP**  
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Prepared for

Canadian businesses operating in  
or selling to customers in the U.S.

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# Tax Considerations **South of the Border**

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Canadian businesses operating in or selling to customers in the United States may be subject to U.S. income taxes and/or may need to collect and remit U.S. state sales tax.

## Operating your business in the U.S. doesn't have to be difficult

Understanding tax requirements in the U.S. can be complex and overwhelming for Canadian companies operating or selling to customers across the border. Welch can help you learn to navigate this complicated tax environment.

Welch LLP has the range and scope of experience to assist you whether you are looking at early stage entry or large scale expansion to the U.S. We can provide advice in a wide range of areas including:

- Corporate tax return preparation
- Personal tax return preparation
- Federal and state voluntary disclosures
- Sales tax review and compliance
- Strategic tax planning
- Representation to tax authorities
- Due diligence
- Estate tax for Canadians (U.S. real estate and securities) and U.S. citizens (worldwide assets)



# Is Your Business Subject to **Taxation?**

*Whether your company is subject to U.S. federal and/or state taxation depends on several factors. For U.S. federal income tax purposes, the primary factor is whether the company has a permanent establishment in the U.S. For state income and sales tax purposes, the primary factor is whether the company has Nexus within one or more states.*



## **Permanent Establishment (PE)**

If a Canadian company has a PE in the U.S. it is subject to U.S. federal income taxation. A PE includes a place of management, branch, office, or factory. It also includes a building site or construction/installation project if the construction or installation period exceeds twelve months. In addition, there are also services PE rules, which may deem a PE to exist based on services performed in the U.S. by Canadian employees.

A company with a PE should be filing a U.S. federal income tax return. If a Canadian company is operating as a branch in the U.S., the U.S. federal and state income tax liability will be treated as a foreign tax paid. The company may then be eligible for a foreign tax credit on its Canadian tax return, which should decrease the company's Canadian tax liability.

A Canadian company that does not have a PE must file an annual U.S. federal tax return to disclose its Treaty-based position in order to avoid an annual U.S. \$10,000 penalty.

## **Nexus**

The concept of Nexus looks at whether a business has a non-trivial presence in one or more states. It is determined on a state-by-state basis and the Nexus criteria differs for sales tax versus income tax purposes. In determining whether the Canadian business has Nexus, consider if the business has employees (including those attending trade shows), provides installation or implementation, has inventory stored, or has a physical location or property (including intangible property) in the state.

Rules vary from state to state and even a temporary presence may be enough to establish Nexus. In addition, various states follow the Treaty, while others do not.

It is also worth noting that if two businesses are affiliated with one another, in determining if one of them has Nexus, the operations of the other may be taken into account.

It is crucial to carefully consider the operations of a business in relation to each state in which it operates or has customers.



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Welch LLP is a Chartered Professional Accounting firm that provides a full range of accounting, assurance, tax, advisory and specialty services. Welch offers industry specific services and knowledge with a relationship-driven approach to client service to private enterprises, government and not-for-profit organizations.

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**Alan Tippett, CPA (Indiana)**  
Director of U.S. Tax Advisory Services  
613.236.9191 x 254  
atippett@welchllp.com

**Don Scott, FCPA, FCA**  
Director of Tax Services, Tax Partner  
613.236.9191 x 515  
dscott@welchllp.com

**Jim McConnery, CPA, CA, TEP**  
Partner  
613.236.9191 x 529  
jmconnery@welchllp.com