

## Doing business in the U.S.





# Doing business in the United States

This booklet is designed to provide an overview of the business climate in the United States. The discussion surveys the many considerations involved in establishing a business enterprise in the United States. While every attempt is made to keep this publication current and concise, the rapidity of change and the complexity of our interrelated world is a strong indication that consultation with professional advisors is indispensable. The highly skilled and dedicated professionals of PKF North America and PKF International Limited look forward to working with you to review, assess, and implement your business plans. We are committed to responsiveness and dedicated to excellence.

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## Foreword

This booklet is produced as a service to the clients of the member firms of PKF North America and PKF International Limited, and as an introduction to the fiscal and commercial environment of the United States for those who are considering doing business within its jurisdiction. The contents provide a guide for understanding the business processes, not a complete description of everything a business or entity needs to know. This booklet should not be used as the basis for any decision in the complex areas of U.S. commercial and tax law. Because the laws of the United States are constantly being modified – both legislatively and judicially – clients are advised to seek specific professional advice from any PKF North America member firm before proceeding with any activities involving the United States.

A key component of doing business in the United States is to understand the various legal jurisdictions that impact businesses. Laws affecting business can be enacted by all government entities – federal, state, county and municipality. Often county and municipality are referred to as “local.” While it does not occur often, various laws enacted by the separate entities can be in conflict. The appendix has contact information for many business-related federal agencies, along with each state’s contact data.



# Demographic and Environmental Overview

## Geography and Population

The total area of the United States is 3,679,192 square miles (9,529,065 kilometers). The mainland stretches nearly 2,800 miles (4,506 kilometers) from the Atlantic Ocean to the Pacific Ocean, and approximately 1,600 miles (2,575 kilometers) from Canada in the north to Mexico in the south. The noncontiguous states include Alaska, which lies northwest of Canada and borders the Arctic Ocean, and Hawaii, located in the Pacific Ocean approximately 2,000 miles (3,219 kilometers) from the mainland. The population of the United States is approximately 310 million. Similar tax laws and special rules apply in the Commonwealth of Puerto Rico and the overseas territories of American Samoa, Guam, Northern Mariana Islands, and the U.S. Virgin Islands.

## Political System

The United States declared its independence from the United Kingdom in 1776 and established a federal republic that now consists of 50 politically separate states and the District of Columbia (Washington, D.C.), the seat of the federal government. The United States has a written constitution; the legal system is based on English common law. However, the state of Louisiana derives its law from the Napoleonic civil code, and nine states have community property laws. The federal government is a tripartite system consisting of independent executive, legislative and judicial branches. Each state has a statewide government elected by the residents of their state. Within the state, there are political subdivisions, known as counties in most states (parishes in the state of Louisiana). Within the counties, there are cities, towns, villages and other local municipalities. Each political entity has the capability of enacting laws that impact its residents.

## Economics

A free enterprise system, coupled with an abundance of natural resources and a highly educated work force, produced a gross domestic product of approximately \$14.43 trillion based on 2009 data. The United States evolved from a primarily agricultural economy in the 19th Century to a highly industrialized one for most of the 20th Century. However, in the past few years, the country's orientation has become increasingly service-based. The United States, a major contributor to international financial agencies, created free trade agreements with Canada and Mexico (NAFTA) and Central America (CAFTA). The United States is also a member of the World Trade Organization (WTO), the General Agreement on Tariffs and Trade (GATT), the Organization for Economic Cooperation and Development (OECD), Asia-Pacific Economic Cooperation (APEC), and the Organization of American States (OAS).





## Communications and Transportation

The nation has a comprehensive network of internal and external communications systems, which includes all forms of wired connections, almost 100 percent universal coverage for cellular technologies and a quickly growing implementation of wireless networks. The transportation network for the movement of goods and services is extensive and varied. While paper maps are readily available for purchase, Web-based companies, such as Google, MapQuest and Yahoo, have extensive online mapping capabilities that provide specific address locations, along with driving directions between multiple points.

## Services and Exchange Controls

Foreign corporations have the opportunity to do business throughout the United States. The Appendix lists contact information for each state's economic development resource. Contact the appropriate organization for more detailed information about the structure of doing business in that state.

The two major financial centers are in New York City and Los Angeles. Washington, D.C. is a focal point for government-assisted financing, while Chicago, Miami, Atlanta and Dallas/Houston are major regional financial centers. Through the Internet, financial transactions can be placed instantly from any location to any other location. This enables a significant dispersion of growth throughout the country. There are no exchange controls. Information returns are sometimes required on the transfer of large sums of cash or cash equivalents.

## Finance

The U.S. banking market comprises several types of financial institutions, including commercial banks, investment banks, savings banks, savings and loan associations and credit unions. In addition, specialized institutions, including leasing companies, finance companies and factoring companies, offer asset-based financing. Commercial banks supply the most funds to businesses. Short-term financing is usually arranged as a line of credit. Medium-term financing, generally a term of five to seven years, is often used by foreign investors to begin U.S. operations. As a condition of the loan, a bank usually requires execution of a note and a formal loan agreement that may restrict the borrower's decision-making powers through special covenants. Personal guarantees and audited financial statements are commonly required. Investment bankers are often called on to arrange financing through the sale of stock, debt obligation or commercial paper.

## Grants and Incentives

The federal government provides equal treatment to domestic and foreign investors. While not granting special tax packages or concessions to foreign investors, the government refrains from imposing any specific discriminatory tax burdens on them. Available concessions or tax holidays are generally offered by state or local governments and are tied directly to investments in the specific jurisdiction.



## Regulatory Environment

The U.S. regulatory environment is a combination of open competition and consumer protection. The U.S. Constitution contains an interstate commerce clause that permits the federal government to exercise regulatory control over all businesses engaged in interstate commerce. For a business that is specifically “intrastate” (within one state), such as a restaurant, all regulatory powers reside within the state and its local governmental units. It is important to verify any regulatory information because laws and legal interpretation of the laws are frequently modified. The general policy is to encourage the dissemination of information that allows investors and consumers to sustain order and structure in the marketplace. There are no price or currency controls, but a minimum wage for employees does exist.

## Acquisitions and Mergers

The federal laws governing mergers and acquisitions are administered by the Federal Trade Commission and the Department of Justice. These laws are intended to prohibit, under certain conditions only, mergers or acquisitions that might have the effect of substantially lessening competition. In the case of certain large transactions, advance notice must be given to the Federal Trade Commission pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

## Securities

The Securities and Exchange Commission (SEC) is the primary federal agency that regulates the offering of securities in the United States. One of its primary functions is to assure full and accurate disclosure of financial and business information on securities sold in the United States. The SEC also regulates the securities markets and may bring enforcement actions for improper actions taken with respect to securities transactions.

A foreign investor who wishes to acquire a U.S. corporation may tender cash or issue its own securities in exchange for the stock of the U.S. company. A tender offer requires the foreign investor to file certain information with the SEC. If the acquisition is to be made through the issuance of securities, the acquiring company must file a registration statement with the SEC. All U.S. companies that have securities registered with the SEC, and all companies whose shares are listed on a stock exchange, are required to file periodic reports with the SEC. These quarterly and annual reports also are required of any corporation whose stock is sold over-the-counter and has assets of more than \$10 million or at least 500 shareholders. All public companies must have their financial statements audited annually and reviewed by independent accountants on a quarterly basis. Such independent accountants must be registered with the Public Company Accounting Oversight Board (PCAOB).

There are separate requirements for obtaining a listing on any one of the stock exchanges. Companies also must be aware that many states have specific requirements for filing and disclosure of securities transactions.





## Alternatives to an Audit

Unlike many foreign jurisdictions, no statutory audit requirements generally exist except for public companies. However, banks and other lending institutions often require specific financial information from their clients and may require a client to undergo an annual audit by an independent accounting firm.

Although there is no audit requirement, companies wishing to do business in the United States should consult with their financial professionals on alternatives to an audit. In addition to an audit, simpler and less-costly alternatives include a review or compilation.



# Consumer Protection and Special Industries

A number of consumer protection laws are enforced by federal agencies such as the Consumer Product Safety Commission (CPSC), the Environmental Protection Agency (EPA) and the Food and Drug Administration (FDA). Companies must take notice of the various agencies that have the authority to regulate specific organizational products or processes. In addition, certain industries are subject to regulation because of the nature of their activities.

The Department of Transportation (DOT) has jurisdiction over railroads, trucking, water transport and pipelines engaged in interstate commerce. The Federal Communications Commission (FCC) has authority over television, radio and data transmission. Banks, insurance companies and public utilities are all subject to regulation at the federal level and, in most cases, at the state and/or local level as well.

## Legal Protection for Intangibles

U.S. law extends legal protection for certain intangible assets, or intellectual property. A trademark is a word, phrase, symbol or design that identifies and distinguishes the source of the goods of one party from those of others. A copyright protects an original artistic or literary work; a patent protects an invention. Copyrights and patents are only issued through the federal government; states do not provide any such legal protections. A copyright lasts from the moment of its creation until 70 years after the death of the creator. Computer software qualifies for copyright protection. While it is recommended, a trademark need not be registered with the U.S. Patent Office. A trademark is good as long as it is used, and it lapses after two years of non-use. A patent granted by the U.S. Patent Office will last for 20 years. While historically granted for protecting tangible property, patents are also issued for other types of businesses, such as those that create new forms of life (genetic engineering). It is important to register the business name with the appropriate state department or agency.



## Sarbanes-Oxley Act

The Sarbanes-Oxley Act went into federal legislation in November 2002. Also known as the Public Company Accounting Reform and Investor Protection Act, abbreviated names include “Sarbox” and “SOX.” Among other provisions, the Act requires all public companies to submit an annual report of the effectiveness of their internal accounting controls to the SEC. The Act focuses on a wide range of governance issues with an emphasis on preventing fraud by public companies.

The major provisions of SOX include a required external auditor report on internal controls, increased disclosure regarding all financial statements, and criminal and civil penalties for noncompliance. SOX affects all public U.S. companies, as well as non-U.S. companies with a presence in the United States. In addition, many private companies and even nonprofit organizations are voluntarily adopting many of the provisions in SOX based on due diligence and board of directors’ requests.

Other SOX measures regulate the activities of audit committees and others responsible for the review of company compliance. There is a major focus on the archiving of all communications, and the creation of transparent and auditable systems for recording transactions, dealings and business correspondence.

It is very important to discuss the possible impact of this legislation on the control and reporting requirements of companies doing business in the United States. Contact a PKF North America member firm to explore the impact of SOX on your business.

## 2010 Health Care Act

The 2010 Health Care Act requires certain employers to offer and contribute to employees’ health insurance (or they may incur a penalty). However, employers with less than 50 employees will not be subject to these penalties. Small business employers may qualify for special tax credits for providing health insurance to their employees.

Beginning in 2013, the new act will also require U.S. citizens and legal residents to have qualifying health insurance (with certain exceptions). Individuals not meeting the exceptions who do not have health insurance will be subject to tax penalties. Low and middle income taxpayers will qualify for government assistance. High income taxpayers will see a tax increase on wages and a new levy on investments.



# Forms of Business Organizations

## U.S. Corporation

A corporation is a separate legal entity usually created under the laws of one of the states or the District of Columbia. Each state enacts its own laws regarding the formation and operation of corporations. Although the basic corporate laws are similar, there are differences (largely non-tax related) that may argue for or against specific states in which to incorporate.

In any state, the documents necessary to create a corporation may be obtained from the secretary of state's office in the state's capital city. After incorporation, annual reports must be filed and a fee must be paid. A corporation doing business outside its state of incorporation may find it necessary to register to do business in other states. Registration is accomplished by filing the appropriate documents and filing fee with the secretary of that particular state. Generally, registration will automatically subject a corporation to taxation (including state and local income and franchise taxes) in that jurisdiction.

Technically, the classification of an entity as a corporation for tax purposes is independent from the entity's status under state law. Tax regulations interpreting the U.S. Internal Revenue Code ("Code") classify an entity as either an "eligible entity" or as a corporation under "the check-the-box" rules. The entity is treated as an eligible entity unless it is one of the types of entities classified as a corporation. An eligible entity is an entity that neither meets the definition of a trust nor a corporation. Eligible entities are able to "elect" corporate status. If no election is made, then the entity is treated 1) as a partnership for tax purposes if it has two or more owners, or 2) as "disregarded" as an entity separate from its owner if it has a single owner. Typical examples of an eligible entity are limited liability companies (LLCs), partnerships or sole proprietorships. (LLCs and partnerships are discussed below.)

Under regulations, certain business entities are "per se" corporations that receive mandatory treatment as corporations for tax purposes, such as:

- a business entity that is taxable as a corporation under a provision of the Code, such as a public partnership.
- business entities formed under the laws of U.S. territories and possessions.
- certain foreign business entities classified under Internal Revenue Service (IRS) prescribed lists.

These "per se" corporations are called "regular" or "C" corporations, and they are subject to U.S. tax on worldwide income regardless of where it is earned. U.S. corporation earnings are generally subject to double taxation: initially at the company level and then at the shareholder level when dividends are received. A distribution from a U.S. corporation to a shareholder will be treated as a dividend to the extent it is paid out of current or accumulated earnings and profits. Dividends are not deductible by the corporation. Some relief rules exist for certain intercompany dividends. Dividends paid by a U.S. corporation to non-U.S. persons are subject to 30 percent withholding unless reduced by treaty.



## Branch of a Foreign Corporation

A branch is a part of a corporation and not a separate legal entity in the United States. A foreign corporation may establish a U.S. branch and commence business at any time. Advice should be obtained from legal counsel regarding the merits of registering to do business in states in which the branch (or company) intends to operate, as well as determining the advisability of obtaining limited legal liability.

If a foreign corporation wants to establish a U.S. branch, use of an LLC should be considered. As a general rule, the U.S. branch of a foreign corporation is subject to regular U.S. income tax on net income that is effectively connected to the U.S. business. Investment-type income not effectively connected with a U.S. trade or business is taxed at 30 percent or lower treaty rate. The United States also maintains a branch profits tax (BPT) that is imposed in addition to the regular corporate tax. The BPT is intended to impose a double tax on distributions from branches in order to mirror the double tax that corporations and shareholders pay on dividends and to eliminate tax advantages from operating as a US branch versus a US corporation. Therefore, the BPT is calculated as 30 percent of the “dividend equivalent amount,” and can result in federal tax liabilities as high as 54 percent, equal to the combined maximum US corporation income tax plus the 30% maximum withholding tax on dividends. As with withholding tax on dividends, the BPT can be reduced or eliminated through tax treaties.

Since branches do not provide tax advantages over corporations, and require US tax filing by the foreign corporation, formation and use of US corporations is commonly preferred over operation via a branch.

## Partnership

For legal purposes, a partnership is defined as an association of two or more persons formed to carry on a business for profit as co-owners. Defined by U.S. tax law, a partnership includes a syndicate, pool, joint venture or other unincorporated organization by which any business is conducted – and which is not, for federal income tax purposes, a corporation, trust or estate. Each state and the District of Columbia has its own laws governing the formation and operation of partnerships. Limited partnerships are usually formed under the state’s recognized Limited Partnership Act. Public partnerships are defined as those whose interests are traded on an established securities market (or a secondary or equivalent market). Most public partnerships are taxed as corporations.

Non – public partnerships are generally treated as conduits for U.S. income tax purposes, and each partner recognizes a proportionate share of income, loss and credit, whether or not it is distributed to the partners. Partnership law allows for much flexibility for allocation of profits and losses, as well as distributions, if the partnership agreement meets the “substantial economic effect” rules in the IRS regulations. Any partnership engaged in a trade or business in the United States must withhold at the highest U.S. tax rate applicable to its foreign partners’ distributive share of business income. Foreign partners may recover excess tax withheld by filing U.S. income tax returns. Similar withholding rules may apply at the state level to nonresident partners.



## Limited liability Company

The limited liability company (LLC) is still a relatively new organizational structure. Its purpose is to provide limited liability for owners while maintaining a single level of tax. The LLC offers the advantages of a partnership, while eliminating some of the drawbacks of these entities. Properly structured, an LLC with more than one member is treated as a partnership for tax purposes, providing all of a partnership's flexibility with the limited liability protection of a corporation. The LLC also may have foreign persons as members. Because LLCs provide significant flexibility for U.S. tax planning, the use of these entities is common. For example, single-member LLCs can serve as divisions of corporations, or as owners of sole proprietorships while enjoying limited liability protection.

An LLC with a single foreign corporate owner is taxed as a U.S. branch unless the owner elects to have the LLC taxed as a US corporation under the "check-the-box" rules. A multi-owner LLC is subject to the partnership withholding tax rules described previously, again, unless an election is made to tax the LLC as a corporation.

State tax planning also should be considered with LLCs since their treatment varies throughout the nation. A foreign owner considering use of a U.S. LLC should also consider the tax treatment of the LLC in the owner's country. In part because LLC's are relatively new, opinion varies from country to country as to whether they should be treated as corporations or as partnerships. In some cases, the foreign country view of the LLC can also affect mutual tax treaty benefits.





# Accounting

Conducting business in the United States requires establishing an appropriate method of record-keeping that will enable proper reporting of the results of business operations. The accounting requirement enables full and fair disclosure of the financial condition in compliance with applicable accounting principles, laws, rules and regulations.

This effort starts with the understanding of the state and federal requirements. Most companies establish their business within a state, and as a result, must first comply with the state regulations for establishing a business, along with the reporting rules and requirements for maintaining proper accounting records. U.S. tax laws provide only general guidelines that support the preparation of appropriate tax returns. There are additional requirements for companies issuing publicly traded securities. For example, the Foreign Corrupt Practices Act is a significant set of rules for maintaining books and records that properly reflect all business transactions.

## Tax Accounting and Reporting

Depending on the type of business organization, the company may choose the accrual or cash method of accounting. Companies with gross receipts less than \$5 million may generally choose the cash method, while those with \$5 million or more in annual gross receipts must, with a few exceptions use the accrual method for U.S. tax reporting. Certain personal service businesses are permitted to use the cash method regardless of their gross receipts. In addition, there are substantial other statutorily required or permitted variances between U.S. tax reporting requirements and U.S. financial accounting standards.

The company will also have to select between reporting on a calendar year or a fiscal year basis. A calendar year is a period of 12 months ending on December 31, and a fiscal year is a period of 12 months ending on the last day of any month other than December for a 52-53 week tax year.

## Statutory Audits are not required

Private businesses are not required to publicly disclose the results of their financial operations. Based on their own requirements, banks and other lending institutions may require financial statements. Public companies are required to present annual financial statements to shareholders and comply with the SEC's rules and regulations, including the requirement of an annual audit.



## Fundamental financial accounting standards

The fundamental guidelines for maintaining accounting records include the following:

- Accounting records are kept in accordance with the laws of each applicable jurisdiction.
- Accounting records fairly and accurately reflect the transactions or events to which they relate.
- Accounting records fairly and accurately reflect the company's assets, liabilities, revenues and expenses.
- All transactions are supported by accurate documentation in reasonable detail.
- Company financial reports are generally required to be prepared in accordance with U.S. Generally Accepted Accounting Principles (GAAP).
- The company has an appropriate system of internal accounting controls.

## Accounting Principles

U.S. Generally Accepted Accounting Principles (U.S. GAAP) is the recognized set of standards for the preparation of general purpose financial statements in the United States. The Financial Accounting Standards Board (FASB) Codification, effective for periods ending after September 15, 2009, serves as the single source of authoritative nongovernmental U.S. GAAP. At that date, all existing accounting standards were superseded by the FASB Codification and all other accounting literature not included in the FASB Codification is considered nonauthoritative. As a result, the FASB Codification is the authority for both private and public companies. The Governmental Accounting Standards Board (GASB) is the source for Generally Accepted Accounting Principles (GAAP) for state and local governments in the U.S. U.S. GAAP is not written into law, however, the U.S. Securities Exchange Commission (SEC) requires that U.S. domestic issuers (public companies) report under U.S. GAAP. Foreign Private Issues may report under U.S. GAAP or International Financial Reporting Standards as issued by the International Accounting Standards Board (IFRS). Private companies may have the option to report in accordance with IFRS or IFRS for Small and Medium Sized Enterprises (IFRS for SME's) as the American Institute of Certified Public Accountants (AICPA) amended Rules 202 and 203 to expand the definition of GAAP to included standards issued by the International Accounting Standards Board.

The key elements for adhering to accounting principles are consistency throughout each reporting period and consistency among succeeding periods. Any changes to the application of accounting principles must be explained with the cumulative effect adjustments presented in accordance with U.S. GAAP.

Certain assets are measured at historical cost and others are measured at fair value such as marketable equity securities and other financial instruments in which U.S. GAAP allows for a fair value option. Generally, tangible long-lived assets, such as property, plant, and equipment, are subject to depreciation adjustments that would allow the financial statements to reflect the asset's original cost less accumulated depreciation. There are tax guidelines that specifically provide for the various methods companies can use to depreciate assets over their respective economic lives as defined by the Internal Revenue Service. These guidelines provide for various accelerated methods of depreciation that must be applied to the basis of the assets.

Unlike IFRS, U.S. GAAP does not allow a fair value option for property, plant, and equipment. In addition, long-lived tangible assets (or asset groups) must be evaluated for impairment whenever a triggering event occurs by applying a non discounted cash flow approach. If the non-discounted cash flows are less than the assets carrying amount, the asset is written down to its fair value and an impairment loss is recognized.



U.S. GAAP defines fair value as the price that would be received to sell an asset, or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The scope of the definition and guidance applies broadly to fair value measurements encountered in GAAP, both financial and non-financial. U.S. GAAP also provides for a formal hierarchy for measuring and evaluating fair value estimates.

## Financial Reporting

Financial statements prepared in accordance with U.S. GAAP include a balance sheet, statement of operations, statement of stockholders' equity and a statement of cash flows. If a public issuer, the company must follow SEC interpretations of U.S. GAAP. Balance sheets reflect the status of the company's assets, liabilities and retained earnings at a specific date and time. Income statements reflect the results of business operations for a specific period of time. Generally, companies will issue these statements for the current period, along with the comparative information for the immediately preceding reporting period although not required for private companies.

Although private companies are not required to have their financial statements audited, public companies must have an annual financial statement audit conducted by an independent Certified Public Accountant (CPA). Generally the users of private company financial statements, such as banks, private equity funds, or other private investors require financial statements to be audited, reviewed, or compiled. Audits of public companies are conducted in accordance with standards of the Public Company Accounting Oversight Board (PCAOB). Audits of other organizations are conducted in accordance with Generally Accepted Auditing Standards (GAAS) that are issued by the Auditing Standards Board of the AICPA. The audit's essential element is the opinion of the auditor that the information contained in the financial statements present fairly, in all material respects, the financial position, results of operations and cash flows in accordance with U.S. GAAP.

More information can be found on the AICPA Web site and other reference sites. Web site URLs are located in the appendix at the end of this booklet.



# U.S. Federal Taxation

Similar to other countries, U.S. taxation is full of opportunities and challenges. There are a number of different taxing jurisdictions in the United States and the various political subdivisions, including states, counties, cities, towns and villages. However, in this section we will highlight federal taxation information that organizations should consider. The best way to understand your potential tax requirements is to discuss the issues with a PKF North American Network or PKF International tax professional.

An entity is generally subject to U.S. tax if the individual or corporation is a resident in the U.S. or has income that is “effectively connected with the conduct of a trade or business within the United States.” This is an ongoing test, which means that any trade or business that has income in the United States at any time in the year is probably subject to U.S. tax for that particular tax year. Unlike most countries, the U.S. taxes foreign profits upon repatriation.

The federal government imposes income taxes on corporations, individuals, estates and trusts. It also imposes payroll taxes, the primary one being the Social Security tax levied on the employer and the employee. There are also estate and gift taxes and a number of excise taxes. No national sales or value-added tax is imposed. State and local taxes can significantly increase an individual’s or business’ tax liability.

The U.S. individual income tax system is a self-assessment method that requires withholding tax from employees’ salaries and certain other payments. When a taxpayer is required to withhold taxes on payments to another person, the taxpayer is in a fiduciary relationship and must remit the withheld taxes to the government. Failure to withhold or failure to remit will generally subject the taxpayer to liability for the taxes and penalties. In addition, businesses and individuals are required to make quarterly estimated payments during the year.

After the close of the tax year, taxpayers must file a tax return that reports all taxable income and allowable deductions. The tax is computed on net taxable income and compared with the total taxes the taxpayer either had withheld from income or paid as estimated installments of tax. The net of these two becomes either the final tax payment by or refund to the taxpayer. All returns are filed under penalty of perjury.

The Internal Revenue Service (IRS) is a branch of the Department of the Treasury. Responsible for administering tax laws, its mission includes interpreting tax laws, auditing tax returns and collecting revenue. Absent a material misstatement of income or fraud, the statute of limitations (SOL) on a tax return is a period ending on the later of three years from the date the return is filed (or required to be filed) or two years from the date of payment. If a return has not been filed, the SOL period will not begin, leaving the year open indefinitely.

The federal tax law is enacted by the U.S. Congress and the legislative structure is found in the Internal Revenue Code of 1986, as amended. The Department of the Treasury and the IRS issue interpretations of the statutory provisions. Sometimes, disagreements arise between taxpayers and the IRS concerning the proper tax treatment of various items and, after administrative reviews within the IRS, many cases end up in federal court. Several of these court-derived interpretations are integral to an understanding of the fabric of U.S. tax law.



## Substance over Form

A constant thread in the administration of U.S. tax law is that the substance of a transaction takes precedence over the form of the transaction. This concept is known as the economic substance doctrine. This concept has been applied in the courts to deny tax benefits of transactions executed for the specific purpose of avoidance of income taxes without the transaction's changing the overall economic position of the taxpayer. Part of the Health Care and Education Reconciliation Act of 2010, the economic substance doctrine has now been codified into the Internal Revenue Code and new strict liability penalty provisions apply for its violation. Under the doctrine, a transaction is considered to have economic substance if it results in a meaningful change in the taxpayer's economic position without regard to the federal income tax effects of the transaction. Further, the transaction must also have a substantial economic purpose irrespective of its federal income tax effects. If the taxpayer fails to meet either requirement, the transaction will lack economic substance and the tax benefits of the transaction will be denied. The accuracy-related penalty for an underpayment of taxes occurring due to the denial of tax benefits under the economic substance doctrine is 20% for transactions disclosed in a timely filed tax return and 40% in the case of nondisclosure.

## Transfer Pricing

Transfer pricing issues derive from the broad authority of the IRS to allocate income, deductions, credits and other items between or among related entities to prevent evasion of tax or to clearly reflect income. The courts have generally upheld both the authority and methodologies of the tax reallocations. The IRS may make such adjustments as are necessary. Either by inadvertence or design, the taxable income of a controlled taxpayer is affected by its dealings, either directly or indirectly, with other members of the same controlled group. Adjustments made by the IRS to one member of a group may require correlative adjustments to other affected group members.

The IRS increases its scrutiny on transfer pricing when related United States and foreign group members are involved. Regulations were issued that reinforce the "arms-length" standard while increasing the emphasis on comparability and documentation. Arms-length transactions are identified as transactions between two unrelated companies. Transactions between a holding company and its wholly owned subsidiary are not considered at arms-length. Several methods are permitted to determine a proper arms-length price, including the use of transaction comparables, comparable profits and profit split methods. Taxpayers must identify and document the best method, depending on their circumstances. Failure to maintain contemporaneous documentation of pricing determinations, including a written transfer price study, could result in substantial penalties – as much as 40 percent of the tax due related to the transfer pricing adjustment. While transfer pricing studies provide penalty protection, they are currently not mandatory as in some other foreign jurisdictions. IRS adjustments also could result in double taxation since some treaty country partners may not give correlative adjustments in U.S. transfer pricing cases. In cases where a treaty country is involved, consult a competent authority on inter-company transactions.

To mitigate controversies in transfer pricing disputes, the IRS encourages using Advanced Pricing Agreements (APA). An APA is a prospective agreement between the IRS and the taxpayer to determine compliance with the arms-length standard. It is expected that when treaty partners are involved, the competent authorities in the relevant countries will be involved in the process. If possible, taxpayers should seek bilateral, and possibly multilateral, agreements to ensure the pricing strategy is agreed upon by all countries involved.



## Tax Treaties

The United States enters into tax treaties for the primary purpose of eliminating double taxation. The U.S. Model Income Tax Treaty – based on the Organization for Economic Co-operation and Development (OECD) Model – was the basis for all recent treaty negotiations. Under the U.S. Constitution, treaties and public laws are given equal weight. When there are conflicts between statute and treaty, the most recent statute or treaty controls. There was a tendency in recent U.S. tax law changes to include treaty override provisions; newer treaties also contain an anti-treaty shopping rule that limits the benefits of the treaties to bona fide residents of the contracting states. After a treaty is negotiated and signed, it must be ratified by the U.S. Senate before it is effective.

As a matter of internal law, if any activities conducted by a company or individual constitute conducting a U.S. trade or business, any income derived from that activity most likely will be subject to U.S. federal and state income taxation. Such income is known as income that is “effectively connected with a U.S. trade or business” or “ECI”. Double income tax treaties provide for the concept of a permanent establishment whereby a greater level of activity is permitted without creating a taxable presence than would be the case of ECI. Therefore, for companies or persons resident in countries that have a tax treaty with the U.S., such persons falling within the purview of the permanent establishment article of U.S. treaties typically file a treaty-based return to claim treaty benefits as protection in the event the U.S. tax authorities assert that a taxable presence has been created.

## Taxation of U.S. Resident Corporation

A U.S. resident corporation is a company incorporated under the laws of a state or the District of Columbia. It is also an entity treated, for tax purposes, as a corporation under “check-the-box” regulations. The place where management is located and control is exercised is irrelevant. A resident corporation is taxed by the United States on its worldwide income, including capital gains, without regard to the source of such income. Net taxable income is subject to a graduated rate structure ranging from 15 percent to 35 percent.

At certain income levels, higher marginal rates are imposed to eliminate the benefit of the graduated rates for corporations. The highest effective rate is 35 percent.

U.S. corporations are required to file income tax returns for each tax year (generally for 12 months). Income tax returns are due on the 15th day of the third month following the close of the taxable year. For companies on the calendar year, the return is due March 15. Extensions of time to file may be obtained for up to six months. Estimated income taxes must be paid quarterly during the year. Penalties are imposed for failure to make adequate estimated payments.

For a foreign enterprise entering into the U.S. market, it is more common for that foreign business to conduct business in the U.S. through the formation of a U.S. resident corporation. This is true due to the complex expense allocation and apportionment rules that apply when the branch form of doing business is used. Further, as stated below, the branch profits tax will apply for foreign companies doing business without an incorporated entity. The application of the branch profits tax can be unpredictable and complex.





## Affiliated Companies and Consolidated Returns

Members of a group of U.S. corporations affiliated by 80 percent or more of direct ownership may elect to join in the filing of a consolidated U.S. income tax return. An affiliated group exists where one or more chains of included corporations are connected through share ownership with a common parent corporation. The common parent files one return on behalf of the entire group. Non-includible corporations, including foreign corporations, are prohibited from joining such a group.

Generally, it is advantageous to file a consolidated return in order to combine losses of some members with income of other members; however, there will be occasions in which it can be a disadvantage. Once a group elects to file on the consolidated basis, it must continue to do so unless the ownership chain is broken or the IRS grants permission to discontinue filing on that basis (which happens only on rare occasions).

## Losses

U.S. tax laws distinguish between net operating losses (NOLs) and capital losses. An NOL is the excess of tax deductions over the company's gross income. Subject to limitation, an NOL may be carried back two years and forward 20 years until fully utilized. While NOLs can be used in a consolidated group, there are limitations on using the carry-forward losses from pre-consolidation years or when a change in ownership occurred. Capital losses will arise on the disposition of capital assets and may only offset capital gains. To the extent not used in the current taxable year, capital losses may be carried back three years and forward five years. Restrictions exist, similar to those for NOLs, when the company experiences changes in ownership. At different times, the NOL carryback periods have been extended beyond two years in order to provide tax breaks to stimulate the U.S. economy. Therefore, it is important to check with a U.S. tax professional to determine whether any temporary extensions of the NOL carryback periods apply.

## Computation of Taxable Income

Taxable income is defined as gross income minus all allowable deductions. Gross income includes business income, gains, interest, dividends and all other increases of wealth, unless specifically excluded from taxation. Although gains would normally be taxed or losses deducted when they are realized, recognition may be postponed under the tax law. The mere increase or decrease of wealth, for example, generally is not a recognition event. Deduction of expenses and losses may be claimed only to the extent set forth in the Internal Revenue Code.

A corporation is allowed to deduct the cost of goods sold, interest on indebtedness, and other ordinary and necessary business expenses. Capital expenditures may not be currently deducted, but the cost may be recovered under depreciation and amortization rules. Dividends paid to shareholders may not be deducted, but there is a partial to full exclusion for certain dividends received by one U.S. corporation from another U.S. corporation.

A corporation may also be subject to the alternative minimum tax (AMT), an amount calculated by adjusting regular taxable income to eliminate certain preferences that are allowable as deductions for regular tax purposes. The AMT rate is 20 percent and is payable if it exceeds the regular tax liability. AMT is designed to accelerate the timing of income and AMT paid is available as a credit against regular tax in future years if regular tax exceeds current AMT.



The tax laws also prescribe several penalty taxes that may be imposed, such as accumulated earnings and personal holding company taxes. Those add-on taxes are imposed if the corporation retains excessive earnings or holds substantial passive assets.

## Timing Differences and Preferences

A number of special rules in U.S. tax law means that income may be taxed or deductions allowed in tax periods that are different from the financial statement reporting periods. Some of these items are permanent differences between book and tax income, while some merely affect the timing of their recognition. The corporate income tax return requires a reconciliation of these differences (commonly called Schedule M items). Differences may also arise between the bases of assets or liabilities reported for financial statements and those reported for tax purposes. The U.S. is also somewhat unique in that many businesses are permitted to base their income tax reporting upon their cash receipts and disbursements.

## Debt versus Equity

In establishing the capital structure of a U.S. corporation, the fact that interest paid is deductible, while dividends paid are not, places a high premium on the appropriate classification of capital items. The characterization given by the parties is not the sole determinative factor since the IRS has the authority to reallocate debt as equity. Therefore, unlike many foreign tax jurisdictions, the U.S. tax law does not provide specific rules to distinguish debt from equity. Instead, the U.S. tax authorities have provided the factors it considers when considering whether a particular investment is debt or equity. The debt-to-equity ratio is one of the more important factors used in making this decision. A generally accepted ratio is 3:1, although in litigation, higher ratios have been sustained.

Additional factors taken into account in analyzing an instrument as equity or debt include terms, creditors' rights and the economics of the entire operation, including debt coverage and cash flows. Special rules relate to the deductibility of certain foreign related party interest when the debt to equity ratio of the corporation exceeds 1.5:1. These rules, known as the "earnings stripping" provision, could result in the indefinite deferral of interest deductions. Also, accrued unpaid interest owed to foreign related parties is not deductible until paid.

## Depreciation and Amortization

Since capital expenditures may not be written off in the year incurred, the tax law established a system of depreciation in order for taxpayers to recover the cost of property over its estimated useful life. In an effort to minimize controversies between the IRS and taxpayers, the law sets up tables based on a Modified Accelerated Cost Recovery System (MACRS). Tangible personal property is depreciated over a three-, five-, seven-, 10-, 15- or 20-year period using an accelerated method. Residential real property is depreciated on a straight line basis over 27½ years and nonresidential realty over 39 years. For tangible personal property, recapture of depreciation may occur at the time the property is sold.



Some capital expenditures are not covered under the depreciation rules; instead, they are handled through special statutory amortization rules. Expenditures such as organization costs, start-up costs, research and development expenses, and depletion for natural resources, are recovered through amortization deductions. The capitalized cost of goodwill and many other intangibles obtained in connection with the acquisition of a trade or business are amortized over a 15-year period beginning in the month of acquisition.

Also, immediate expensing of certain business property up to a limited amount defined by statute is available for taxpayers that place in service a limited amount of business assets. During recent years, the expensing 50% of business assets with a statutory life of 20 or fewer years, commonly known as “bonus depreciation”, has been made available for original use property as a tax incentive to stimulate the economy.

## Foreign Source Income Rules and Foreign Tax Credit

A U.S. corporation is taxed on its worldwide income and gains. In addition, income of a foreign affiliate may be attributed, as a deemed dividend, to the U.S. corporation under Subpart F rules. To provide relief from double taxation, the U.S. business may claim a foreign tax credit or deduct foreign taxes paid or accrued. Only taxes based on net income or capital gains may be credited. Taxes that cannot be claimed as a credit may be deducted. The foreign tax credit is subject to separate limitations based on type of income. Excess credits may be carried back one year and forward ten years. A company also may credit certain “deemed paid” foreign taxes related to foreign earnings from actual or imputed dividends.

Sourcing rules characterizing whether an item of income is U.S. source or foreign source are important since only the U.S. tax liability on foreign source income can be offset by the foreign tax credit. Additionally, foreign source losses that are netted against U.S. source income in one year can recharacterize foreign source income generated in a subsequent year as U.S. source income for purposes of computing the foreign tax credit limitation.

## Taxation of Foreign Corporations

A foreign corporation is any corporation that is not organized under the laws of a state or the District of Columbia. The income of a foreign corporation may be taxed under two separate tax regimes:

- 1 Income from U.S. sources and certain types of foreign source income that are effectively connected with a U.S. trade or business and are defined as Effectively Connected Income (ECI) are taxed at graduated U.S. corporation tax rates.
- 2 Certain types of U.S. source fixed determinable annual or periodic (FDAP) income are taxed at a flat rate of 30 percent of gross income, unless a lower treaty rate applies. Examples of FDAP include interest, dividends, royalties and annuity income.

A foreign corporation is subject to U.S. tax if it has U.S. source income, and if the company is engaged in a U.S. trade or business. If the foreign corporation is resident in a treaty country, the treaty may affect this determination. As a general rule, a foreign corporation will be subject to U.S. tax during the year if it has any U.S. source income. FDAP income will be taxed at 30 percent or the reduced treaty rate; ECI will usually be taxable by the United States only if, and to the extent that, the foreign corporation is engaged in a U.S. trade or business. However, if the taxpayer can demonstrate that a



“permanent establishment” has not been created (as defined in the relevant income tax treaty), then the U.S. taxation can generally be avoided if the taxpayer claims the benefits of the treaty.

## **Permanent Establishment Rule and Business income**

A foreign corporation resident of a treaty country conducting business in the United States is normally subject to U.S. income tax on business income – but only if it has a permanent establishment in the United States (as defined by the applicable treaty), and then, only to the extent that such income is attributed to such permanent establishment. In general, a foreign corporation’s U.S. agent’s office location is not considered a permanent establishment unless the agent regularly exercises power to negotiate and conclude contracts, or has inventory which he or she regularly sells on behalf of the foreign company.

To the extent attributable to a permanent establishment, a foreign corporation’s U.S. source business income and gains are taxed on the same basis and at the same rates as a U.S. corporation. Business income is generally defined as income “effectively connected” with the conduct of a trade or business in the United States. A foreign corporation may claim all ordinary and necessary business expenses associated with the production of ECI, including certain head office expenses.

## **Non-business income and FIRPTA and related withholding taxes**

Certain types of FDAP income are taxed at a flat rate of 30 percent or lower treaty rate. FDAP income is income not effectively connected with the conduct of a U.S. trade or business, including interest, dividends, rents, royalties, annuities and gains from the sale of certain property. The trend with recently updated U.S. tax treaties is to provide an exemption from withholding taxes for dividends if a foreign corporate entity owns a majority stake in a U.S. C corporation. Further, the trend has also been to provide for an exemption from withholding taxes on royalty payments to encourage cross-border investment. Gains from the sale of U.S. real property are subject to tax under the Foreign Investment in Real Property Tax Act (FIRPTA) provisions of the tax law. A foreign person’s gain or loss on the sale or other disposition of a U.S. real property interest (USRPI) is taxed under FIRPTA as if the sale were effectively connected with the conduct of a U.S. trade or business.

FIRPTA gain recognition may be required even if the disposition is in an otherwise nontaxable transaction. A USRPI includes direct and indirect ownership of U.S. real property through a U.S. real property holding company (USRPHC). A USRPHC is a domestic corporation whose U.S. real estate assets comprise greater than 50 percent of the corporation’s total business and worldwide real estate assets. A withholding tax of 10 percent of the gross sales price is generally required on the disposition of a USRPI by foreign persons; partnerships must withhold a higher percentage (up to 35 percent) of the gain reported on the disposition under partnership withholding tax rules. It is possible to obtain from the IRS a withholding certificate that reduces or eliminates the otherwise required withholding. Gain on the sale of stock of a USRPHC is also taxable under FIRPTA.



## Capital gains tax

For corporations, the excess of the net gains from the sale of capital assets over net losses from the sale of assets or net capital gains is taxed at the same rates applicable to ordinary income. However, capital losses may only be used to offset capital gains and the excess of losses over gains may be carried back three years or forward five years. Losses must be applied to the earliest carry-back year before any carry forwards may be used.

## Alternative Minimum Tax (AMT)

The United States imposes an Alternative Minimum Tax on certain corporations at a rate of 20 percent. AMT income is derived from regular taxable income adjusted by specified items that receive preferential treatment under the regular tax system. Such “tax preference” items may include accelerated depreciation, depletion and intangible drilling costs. The AMT is imposed if the tax on alternative minimum taxable income is greater than the regular tax. It does not apply to small corporations, which are defined as corporations with less than \$7.5 million of average annual gross receipts over a three-year period.

## Branch operations and the Branch Profits Tax (BPT)

Income from the operation of a branch in the United States will generally be considered effectively connected with the conduct of a U.S. trade or business. The branch would then be taxed at graduated rates, as previously discussed. However, additional taxes may apply, such as: branch profits tax (BPT), branch interest tax (BIT) and second level withholding. The BPT is a 30 percent tax on the branch's income that is not reinvested in the U.S. operations. The rate may be reduced or eliminated by treaty and is a tax in addition to the graduated corporate tax. Gross income is computed from the branch's separate records. Expenses are allocated between the branch and the head office based on specific allocation rules described in tax regulations.

In addition to the BPT, a BIT is imposed at a 30 percent statutory rate on interest paid by or imputed to a U.S. branch with respect to a foreign corporation. The taxable interest amount represents the excess of the interest deduction over the interest paid. The rate may be reduced or eliminated by treaty.

## Compliance and Reporting

As a result of perceived tax abuses and evasion, in recent years, the U.S. tax authorities have increased its scrutiny and enforcement of U.S. tax reporting requirements relating to foreign-owned entities. A U.S. corporation that is owned directly or indirectly by a 25% or more foreign shareholder must report related party transactions with its foreign shareholder and with foreign companies that are related to a foreign shareholder. Additionally, there are U.S. tax reporting requirements for the payment of U.S. source income to foreign persons. These reporting obligations apply regardless of whether there are withholding taxes on the payments. Further, foreign financial accounts of U.S. persons and entities must be reported if, in the aggregate, the highest balances of these accounts are greater than \$10,000 at any time during the year. The U.S. tax authorities have proposed that these reporting requirements for foreign financial accounts may apply to non-U.S. persons “doing business” in the U.S. There are significant taxpayer penalties for noncompliance with applicable reporting requirements.



## Withholding and Financial and Non-Financial Foreign Entities

Applicable to payments made after 2012 or instruments outstanding two years after March 18, 2012, a 30% withholding tax on any “withholdable payment” made to a “foreign financial institution” applies unless the institution agrees with the U.S. Internal Revenue Service to do all of the following:

- (1) Obtain information from each holder of each account maintained by the institution as is necessary to determine which, if any, of such accounts are “United States accounts”;
- (2) Comply with verification and due diligence procedures of the US Treas.;
- (3) Report on an annual basis information regarding US accounts of the institution;
- (4) Comply with US Treasury Secretary for additional information requests;
- (5) Withhold a 30% tax on payments to (a) accounts held by persons who do not cooperate with requests for information or (b) accounts held by other foreign financial institutions that have not entered into a similar agreement with the IRS to the extent that such payments are allocable to withholdable payments (“passthru payments”)

U.S. persons making payments of “withholdable payments” after 2012 to a foreign person that is a non-financial foreign entity are required to obtain from the beneficial owner either (a) a certification that the beneficial owner of the payment does not have any substantial U.S. owners or (b) the name, address, and TIN of each substantial U.S. owner from the beneficial owner. The withholding agent is required to report this information to the IRS. If the withholding agent does not obtain such a certification or information or knows or has reason to believe it is false, the withholding agent is required to withhold a 30% tax from the payment. These rules do not apply to publicly traded corporations and affiliates, foreign governments, and foreign central banks.

Withholdable payments include U.S.-source fixed or determinable annual or periodical (“FDAP”) income, e.g., U.S.-source dividends, interest, rents, royalties, and payments for services performed inside the U.S. as well as gross proceeds from the sale of assets that produce U.S.-source interest and dividends.





# Foreign Personnel in the United States

## Entry In to the United States

Foreign nationals seeking entry into the United States as non-immigrants are required to have visas that can be applied for at a U.S. Consular Office. A foreign national is referred to as an “alien” and, for U.S. income tax purposes, is classified as either a resident or nonresident alien. In the year of entry or departure, an alien may be classified as both a resident and a nonresident, and will have the option to file a part-year return, commonly referred to as a “dual status” return. The correct identification of the alien’s status is critical to determine the proper tax liabilities for the year.

An alien is categorized as a nonresident alien unless he or she meets one of the two residency tests. The first test automatically classifies an alien as an income tax resident in the United States if the person is a “lawful permanent resident,” a status obtained by holding a Green Card at any time during the year. The second test that would give the alien resident status is the substantial presence test. In order to meet the test, the alien must be physically present in the United States for at least 31 days during the current year and 183 days over a three-year look-back period. The 183 days test considers all days present in the current year, one-third of the days present in the first preceding year and one-sixth of the days present in the second preceding year. Partial days are counted as full days for the computation under this test.

Treaty definitions of residency can be used to override these residency definitions under U.S. tax rules. This override is generally only guaranteed to be available with respect to Federal taxes as States are not bound to such treaties. In addition, if certain conditions are met, an alien can elect to be treated as a U.S. resident for the entire tax year – which can be advantageous in certain circumstances. While exceptions exist, many aliens who work in the United States are required to obtain sailing permits before leaving the country. These permits are issued by the IRS.

## U.S. taxation of resident aliens

A resident alien must report, and is taxed on, worldwide income in the same manner as a U.S. citizen. The U.S. worldwide income taxation system also assumes that new tax resident aliens have been a U.S. taxpayer their entire lives. For example, sale of property acquired prior to the nonresident alien becoming a resident alien will take into consideration the original cost of the property when acquired even if many years before become a U.S. tax resident. For that reason, nonresident aliens that anticipate the possibility of becoming tax residents should strongly consider U.S. tax planning before establishing tax residency.

The U.S. tax system provides for unilateral relief from double taxation via its foreign tax credit rules. If the alien’s income is subject to double taxation, the foreign tax credit system is designed to mitigate double taxation even if no income tax treaty with the foreign country exists. It is possible that if the foreign country has a higher tax rate than the United States or timing discrepancies between the receipt of the foreign income and the payment of foreign income taxes, a full credit will not be available.

Generally, a tax return is due by April 15 for the income earned in the prior calendar tax year. Resident aliens are eligible to claim the same deductions as U.S. citizens. Part-year resident aliens must allocate deductions between the resident and nonresident periods. State and local income tax may also apply. The U.S. tax rate brackets are adjusted annually to



reflect inflation. The rates range from 10 percent to 35 percent on taxable income. The benefit of personal exemptions and certain itemized deductions are limited once adjusted gross income exceeds a certain threshold.

## Reporting requirements for resident and nonresident aliens

Resident aliens are required to file an annual Federal tax return reporting their worldwide income for the previous calendar year. Most States will also require an annual tax return from its residents reporting their worldwide income. Finally, a few cities also require their residents to file annual tax returns. As a result, residents will have from one to three separate annual tax return filing requirements, and all generally due April 15 of the following year.

With few exceptions, resident aliens are generally not required to report U.S. or worldwide assets. The exceptions generally apply to the reporting of international assets such as non-U.S. bank and financial accounts and substantial ownership in non-U.S. entities or trusts where significant information may be required to be reported on an annual basis. Penalties for non-reporting of such information are very significant.

Nonresident aliens are required to file an annual Federal tax return reporting their U.S. source income for the previous calendar. Most States will also require nonresident to file an annual return and pay taxes on income source in the particular state. Nonresident alien returns are generally due by April 15 of the year following the earning of the income.

## Estate and gift tax

A U.S. transfer tax (estate and gift tax) may be imposed on the transfer of property from a donor/decedent to their donee/heir and applies to both resident and nonresident aliens. For a resident alien, the gross estate includes all property of the decedent at the time of death, including real property located outside the United States. For a nonresident alien, the estate consists only of property situated in the United States, including shares of stock in U.S. corporations.

Residency for transfer tax purposes is determined differently than for income tax purpose; the “domicile” of the individual is the controlling factor, not the objective income tax residency rules. Domicile is generally understood to be a place where a person is living without a definite intention of leaving at any point in the future. Domicile is not determined as an objective test, but rather determined based on the individual facts and circumstance of each case.

Property is included in the estate at the fair market value at the date of death (or alternate date six months later), and certain deductions and liabilities may be claimed against the gross estate. An unlimited deduction may be claimed for transfers to a surviving spouse, but only if he or she is a U.S. citizen or legal permanent resident. For a resident alien only, the deduction can be obtained for an alien spouse by using a qualified domestic trust.

A credit is available against the estate tax liability of a U.S. citizen or a resident alien. The credit for 2010 through 2012 for \$5,000,000 is sufficient to allow total property of \$10,000,000 to be passed on without tax.

Nonresidents are entitled to only \$60,000 in credit and so, given such a low threshold, estate tax planning for nonresidents is critical. The use of foreign corporations to hold U.S. property can be an efficient planning strategy in some cases, but not in all as in some cases the holding of the property directly by a nonresident could yield better short term tax results. Also, U.S. estate tax treaties generally provide more favorable treatment.



There are various reporting requirements for foreign gifts to U.S. donees and for transfers by U.S. donors to foreign trusts. These requirements are designed to keep the U.S. government informed of cross-border transfers of funds.

## Employees' rights

Over its history, the U.S. Congress has enacted a number of laws giving specific protection and rights to employees. Additional protections were added by agency rulemaking and court decisions. Individual states and local governments also enacted laws that complement or extend benefits beyond those mandated by the federal government. These restrictions on businesses and benefits to the employees include:

- minimum wage and maximum hour rules,
- nondiscrimination in employment practices,
- pension guarantees,
- collective bargaining rights,
- notice of termination protection,
- health and safety requirements,
- unemployment compensation,
- disability benefits, and
- nondiscrimination against lower-compensated employees in the benefits provided.

The most financially significant of these programs is the Social Security Act that provides retirement, disability and health benefits. The program is funded by a payroll tax imposed on both the employer and the employee at a tax rate of 7.65 percent. The 6.2 percent Federal Insurance Contributions Act (FICA) rate applies to the first \$106,800 of 2010 wages (indexed for inflation). For 2011 only, the FICA rate for employees (not employers) has been reduced to 4.2 percent. The Medicare rate (1.45 percent) applies to all wages, since there is no limit on the amount of earnings subject to the Medicare portion of the tax. Self-employed individuals pay self-employment tax based on a tax rate of 12.4 percent on income up to \$106,800 and a Medicare rate of 2.9 percent on all self-employed income. For 2011 only, the self-employment tax rate is reduced to 10.4 percent. Resident and nonresident aliens with U.S. source wages or salary compensation income are subject to these taxes

## Totalization agreements on social security

A network of bilateral Social Security agreements coordinate the U.S. Social Security program with comparable programs in other countries. These "totalization agreements" eliminate dual Social Security taxation, occurring when a worker from one country works in another country and is required to pay Social Security taxes to both countries on the same earnings. The agreements also help fill gaps in benefit protection for workers who divided their careers between the United States and another country. The Appendix includes a link to the Social Security Administration's Web site detailing totalization agreements for various countries.

## Directors

An in-country director is not a requirement in the U.S.



# State and Local

## Introduction

U.S. tax reporting requirements and methods vary between the 50 states and the District of Colombia. Some states tax based upon net income. Many states, however, require adjustments to get from Federal taxable income to taxable income in the state. Other states tax based upon gross receipts or gross margin, or some variation thereon. It is also noteworthy that many states do not consider themselves bound by the provisions of U.S. mutual income tax treaties. The following is a summary of key concepts in U.S. state taxation.

## Nexus

Nexus refers to a taxpayer's minimum contacts or activity within a jurisdiction such that the jurisdiction may legally levy a tax against the entity. This is sometimes referred to as a "doing business" standard because many jurisdictions levy income/franchise taxes for the privilege of doing business in the jurisdiction. Often the definition of what is considered doing business is expansive and includes broad language such as "any act whatsoever of man in furtherance of profit." However, these nexus or doing business standards are applied in much more fundamental terms as the presence of employees, ownership of real (immovable) or personal (tangible) property or the generation of revenue within the jurisdiction. Any of these three will make it permissible for a state to impose a tax. Some states have gone even further than this "physical presence" triumvirate and hold that nexus may even occur in the absence of physical presence in a jurisdiction. This may occur when a business derives income from intangibles (inchoate rights) such as royalties and interest income from contracts or other rights within a jurisdiction. For example, many states utilizing the economic nexus standard will seek to tax entities deriving income from royalties for the use of trademarks or patents in a state even though no physical property or employees of the taxpayer are present.

## Conformity

Almost all states impose an income/franchise tax that has a U.S. federal income tax starting point for purposes of calculating the state tax base. States calculating there income/franchise tax in this manner will often use either Line 28 or Line 30 of the U.S. Corporation Income Tax Return (Form 1120). This strong connection between U.S. federal and state taxation example of this was the "bonus depreciation" rules used for U.S. federal income tax purposes were not adopted by the states (and there was no conformity). This required calculation of depreciation for many taxpayers on a U.S. federal as well as state basis requires that the states adopt the U.S. federal income tax code as of a certain date, sometimes referred to as a conformity date. This conformity date can be very important in determining whether recent changes in tax policy at the federal level will be adopted by a particular state.



## Sales tax

Almost every state levies a tax for the purchase or use of goods or services within their jurisdiction. This is known as the sales and use tax. The tax is accrued by the vendor of goods or services subject to the tax on behalf of the purchaser and remitted directly to the state. This is called the sales tax. In some instances, especially those where a vendor does not have sufficient nexus with a jurisdiction for it to be subject to the accrual and remittal obligations of the sales and use, the purchaser is required to remit a use tax for goods and services first used and stored in the jurisdiction when the vendor does not accrue and remit the tax on its behalf.

The general rule is that all sales of personal (tangible) property are subject to the sales and use tax unless specifically exempted (many states provide exemptions as incentives for manufacturers or other important industries) and all sales of services are exempt unless specifically taxed.

## Income/Franchise tax

Almost all states levy an income/franchise tax. Taxpayers typically pay both or the higher of the two. Income taxes are levied on a net income tax calculation that has a starting point of either Line 28 or Line 30 of the U.S. Corporation Income Tax Return (Form 112). From this starting point certain items of income or expense may be required to be deducted or added back to the federal calculation. This will yield state taxable income. Franchise taxes are taxes levied for the privilege of exercising corporate franchise (doing business in corporate form or as a limited liability entity) and are levied on the amount of capital apportioned to the jurisdiction.

Both income and franchise taxes (income/franchise) are apportioned. That is, the state seeks to tax only the portion of income or capital from within its borders – this is called apportionment of income. States apportion income by using up to three different factors (property, payroll and receipts) that are measured by a fraction the numerator of which is the amount of the factor in a given state and the denominator is the amount of the factor in all states. The three factors are then averaged together or weighted in some manner. During the last decade more and more states have abandoned using three equally-weighted factors and now use only a single-factor based on receipts. This is believed to favor in-state business over out-of-state businesses because in-state businesses are not penalized for having more property and employees in the state relative to their out-of-state competitors.

Cities may also impose income taxes.

## Property Tax

Counties, cities and other state governmental subdivisions also enforce and collect property taxes, typically assessed to all real property and to business use non-real property.



## Credits and Incentives

States will compete among one another and with other countries for capital investment and job creation with the use of tax credits and incentives. States will abate or refund taxes to create investment. Some incentives must be negotiated in advance of an announcement that a location decision has been made, these are commonly referred to as discretionary incentives, while other incentives may be available even after a company locates in a jurisdiction, these are called statutory incentives. A company considering making a significant capital investment or hiring should discuss credits and incentives with their tax advisors.

## Energy Efficient Tax Incentives

The U.S. federal Energy Policy Act of 2005 established a tax deduction for energy-efficient commercial buildings placed in service from January 1, 2006, through December 31, 2007. These deductions have been extended through 2013.

A tax deduction of \$1.80 per square foot is available for installation of (1) interior lighting, (2) building envelope, or (3) heating, cooling, ventilation, or hot water systems that reduce the building's total energy and power cost by 50% or more when compared to minimum requirements set by ASHRAE Standard 90.1-2001.

A \$.60 per square foot deduction is available to building owners who add any of these items that meet levels that would reasonably contribute to an overall building savings of 50% if additional systems were installed.

Please note that these are federal tax incentives, but many U.S. states offer additional incentives. For more information on these federal and state energy-efficient, or "green", tax incentives, please visit [www.dsireusa.org](http://www.dsireusa.org).





# PKF North America Offices

## Alabama

Dent, Baker & Company, LLP  
Tel: 205.871.1880  
Web: <http://www.dentbaker.com>

Lehmann, Ullman and Barclay LLP  
Tel: 205.328.5966  
Web: <http://www.lub.com>

## Arizona

Price, Kong & Company, P.A.  
Tel: 888.346.0072  
Web: <http://www.pricekong.com>

Regier Carr & Monroe, LLP  
Tel: 520.624.8229  
Web: <http://www.rcmlp.com>

## Arkansas

EGP PLLC  
Tel: 501.374.2910  
Web: <http://www.egpcpas.com>



## California

Abbott, Stringham & Lynch, Inc.

Tel: 408.3778700

Web: <http://www.aslcpa.com>

Brown Armstrong Accountancy Corporation

Tel: 888.565.1040

Web: <http://www.bacpas.com>

Damitz, Brooks, Nightingale, Turner & Morrisset

Tel: 805.963.1837

Web: <http://www.dbntm.com>

Hutchinson and Bloodgood LLP

Tel: 818.637.5000

Web: <http://www.hblp.com>

PKF – California

Tel: 818.630.7630

Web: <http://www.pkfla.com>

PKF – California

Tel: 619.238.1040

Web: <http://www.pkfsandiego.com>

Soren McAdam Christenson LLP

Tel: 909.798.2222

Web: <http://www.smc-cpas.com>

Squar, Milner, Peterson, Miranda & Williamson, LLP

Tel: 949.222.2999

Web: <http://www.squarmilner.com>

Squar Milner, Peterson, Miranda & Williamson, LLP

Tel: 310.826.4474

Web: <http://www.squarmilner.com>



## Colorado

Sample & Bailey, CPAs, P.C.  
Tel: 800.408.2929  
Web: <http://www.sampleandbailey.com>

Bauerle & Company, P.C.  
Tel: 303.759.0089  
Web: <http://www.bcdenver.com>

## Connecticut

Weinstein & Anastasio, P.C.  
Tel: 203.397.2525  
Web: <http://www.wa-cpa.com>

Whittlesey & Hadley, P.C.  
Tel: 860.522.3111  
Web: <http://www.whcpa.com>

## Florida

Averett Warmus Durkee  
Tel: 407.849.1569  
Web: <http://www.awd-cpa.com>

Saltmarsh, Cleaveland & Gund, P.A.  
Tel: 800.477.7458  
Web: <http://www.scg-cpa.com>

Smoak, Davis & Nixon LLP  
Tel: 904.396.5831  
Web: <http://www.sdnllp.com>

McDaniel & Associates, P.C.  
Tel: 850.482.7333  
Web: <http://www.mcdanielcpa.com>



## Georgia

PKF Frazier & Deeter, LLC  
Tel: 404.253.7500  
Web: <http://www.frazierdeeter.com>

Porter Keadle Moore, LLP  
Tel: 404.588.4200  
Web: <http://www.pkm.com>

## Hawaii

PKF Pacific Hawaii LLP  
Tel: 808.441.2803

## Illinois

Lindgren, Callihan, Van Osdol & Co., Ltd.  
Tel: 815.399.7700  
Web: <http://www.lvcvcpa.com>

The Condon Group, Ltd.  
Tel: 708.614.1166  
Web: <http://www.thecondongroup.com>

PKF Chicago LLC  
Tel: 630.545.4660  
Web: <http://www.pkfchicago.com>

## Indiana

McCauley, Nicolas & Company, LLC  
Tel: 812.288.6621  
Web: <http://www.mnccpa.com>

Riney, Hancock & Co., PSC  
Tel: 888.423.1227  
Web: <http://www.rineyhancock.com>



## Kansas

Regier Carr & Monroe, L.L.P.  
Tel: 800.798.2305  
Web: <http://www.rcmlp.com>

## Kentucky

Kelley, Galloway & Company, PSC  
Tel: 606.329.1811  
Web: <http://www.kelleygalloway.com>

Riney, Hancock & Co., PSC  
Tel: 888.926.4540  
Web: <http://www.rineyhancock.com>

## Maryland

Dembo, Jones, Healy, Pennington & Marshall, P.C.  
Tel: 888.283.5472  
Web: <http://www.djhpm.com>

Gorfine, Schiller & Gardyn, P.A.  
Tel: 410.356.5900  
Web: <http://www.gsgcpaonline.com>

PKS, & Company, P.A.  
Tel: 800.274.2564  
Web: <http://www.pkscpa.com>

Smith Elliott Kearns & Company, LLC  
Tel: 301.733.5020  
Web: <http://www.sek.com>



## Massachusetts

PKF, P.C. - Boston  
Tel: 617.753.9985  
Web: <http://www.pkfboston.com>

Wolf & Company, P.C.  
Tel: 617.439.9700  
Web: <http://www.wolfandco.com>

## Michigan

Andrews Hooper & Pavlik P.L.C.  
Tel: 989.497.5300  
Web: <http://www.ahpplc.com>

Clayton & McKervey, P.C.  
Tel: 249.208.8860  
Web: <http://www.claytonmckerverey.com>

## Minnesota

Schechter Dokken Kanter  
Tel: 612.332.5500  
Web: <http://www.sdkcpa.com>

PKF Wipfli LLP  
Tel: 952.548.3400  
Web: <http://www.wipfli.com>

## Missouri

Mueller Prost PC  
Tel: 314.862.2070  
Web: <http://www.muellerprost.com>

The Whitlock Company, LLP  
Tel: 417.881.0145  
Web: <http://www.whitlockco.com.com>

Williams-Keepers LLC  
Tel: 573.442.6171  
Web: <http://www.williamskeepers.com>





## Nebraska

Dutton & Associates P.C.  
Tel: 402.393.4900  
Web: <http://www.duttoncpa.com>

## Nevada

Johnson Jacobson Wilcox  
Tel: 702.304.0404  
Web: <http://www.jjwcpa.com>

## New York

EisnerAmper LLP  
Tel: 201.678.1400  
Web: <http://www.eisneramper.com>

Sobel + Co. LLC  
Tel: 973.994.9494  
Web: <http://www.sobel-cpa.com>

## New York

Dermody, Burke & Brown, CPAs, LLC  
Tel: 888.322.4171  
Web: <http://www.dbbllc.com>

PKF, Certified Public Accountants, A Professional Corporation  
Tel: 212.867.8000  
Web: <http://www.pkfnewyork.com>

EisnerAmper LLP  
Tel: 212.949.8700  
Web: <http://www.eisneramper.com>



## North Carolina

Gilliam Coble & Moser, L.L.P.  
Tel: 336.227.6283  
Web: <http://www.gcmlp.com>

Greer & Walker, LLP  
Tel: 704.377.0239  
Web: <http://www.greerwalker.com>

## Ohio

Barnes, Dennig & Co., Ltd.  
Tel: 513.241.8313  
Web: <http://www.barnesdennig.com>

Bober, Markey, Fedorovich & Company  
Tel: 330.762.9785  
Web: <http://www.bobermarkey.com>

Thorn, Lewis & Duncan, Inc.  
Tel: 937.223.7272  
Web: <http://www.thorncpa.com>

## Oklahoma

Regier Carr & Monroe, L.L.P.  
Tel: 918.494.8700  
Web: <http://www.rcmlp.com>

## Oregon

Maginnis & Carey LLP  
Tel: 503.227.0519  
Web: <http://www.maginnis-carey.com>



## Pennsylvania

PKF Elko & Associates Ltd.  
Tel: 610.565.3930  
Web: <http://www.elkocpa.com>

Herbein + Company, Inc.  
Tel: 610.378.1175  
Web: <http://www.herbein.com>

McGill, Power, Bell & Associates, LLP  
Tel: 814.724.5890  
Web: <http://www.mpbcpa.com>

Smith Elliott Kearns & Company  
Tel: 717.243.9104  
Web: <http://www.sek.com>

Young, Oakes, Brown & Company, PC  
Tel: 814.944.6191  
Web: <http://www.yobco.com>

## Rhode Island

Sansiveri, Kimball & Co., L.L.P.  
Tel: 401.331.0500  
Web: <http://www.sansiveri.com>

## South Carolina

SwaimBrown PA  
Tel: 888.462.4272  
Web: <http://www.swaimbrown.com>

## Tennessee

Blackburn, Childers & Steagall, PLC  
Tel: 423.282.4511  
Web: <http://www.bcscpa.com>

Reynold, Bone & Griesbeck PLC  
Tel 901.682.2431  
Web: <http://www.rbgcpa.com>



## Texas

Holtzman Partners LLP  
Tel: 512.610.7200  
Web: <http://www.holtzmanpartners.com>

Pannell Kerr Forster of Texas, P.C.  
Tel: 713.860.1400  
Web: <http://www.pkftexas.com>

Saville, Dodgen & Co., PLLC  
Tel: 214.922.9727  
Web: <http://www.savillecpa.com>

## Virginia

Hantzmon Wiebel LLP  
Tel: 434.296.2156  
Web: <http://www.hantzmonwiebel.com>

Witt Mares, PLC  
Tel: 757.873.1587  
Web: <http://www.wittmares.com>

## Washington

Sweeney Conrad, P.S.  
Tel: 425.629.1990  
Web: <http://www.sweeneyconrad.com>

## West Virginia

Suttle & Stalnaker, PLLC  
Tel: 800.788.3844  
Web: <http://www.suttlecpas.com>

Toothman Rice, P.L.L.C.  
Tel: 304.624.5471  
Web: <http://www.toothmanrice.com>



## Wisconsin

PKF Wipfli LLP  
Tel: 414.431.9300  
Web: <http://www.wipfli.com>



# Appendix

## Reference Web Sites

There are substantial resources that serve as reference and education tools about the issues surrounding doing business in the United States. It is important to understand that these resources have substantial information, but may or may not address your specific situation. The professionals at PKF North America are ready to answer your questions.

Agency or Resource	WebSite
American Institute of Certified Public Accountants (AICPA)	<a href="http://www.aicpa.org">http://www.aicpa.org</a>
Corporate and Individual Tax Rates	<a href="http://www.smbiz.com/sbr1001.html">http://www.smbiz.com/sbr1001.html</a>
Doing Business with NASA	<a href="http://www.nasa.gov/centers/ames/business">http://www.nasa.gov/centers/ames/business</a>
Education Department	<a href="http://www.ed.gov">http://www.ed.gov</a>
Foreign Business Doing Business in U.S.	<a href="http://www.usa.gov/business/Foreign_business.shtml">http://www.usa.gov/business/Foreign_business.shtml</a>
Inc. Magazine, Top 25 U.S. Cities	<a href="http://www.inc.com/magazine/20050501/Bestcities.html">http://www.inc.com/magazine/20050501/Bestcities.html</a>
Internal Revenue Service (IRS)	<a href="http://www.irs.gov/business">http://www.irs.gov/business</a>
International Federation of Accountants (IFAC)	<a href="http://www.ifac.org">http://www.ifac.org</a>
Public Company Accounting Oversight Board (PCAOB)	<a href="http://www.pcabus.org">http://www.pcabus.org</a>
Sarbanes-Oxley Explained	<a href="http://www.aicpa.org/sarbanes/index.asp">http://www.aicpa.org/sarbanes/index.asp</a>
Securities and Exchange Commission (SEC)	<a href="http://www.sec.gov">http://www.sec.gov</a>
Small Business Administration (SBA)	<a href="http://www.sba.gov">http://www.sba.gov</a>
Social Security Administration Totalization Agreements	<a href="http://www.ssa.gov/international/agreementsoverview.html">http://www.ssa.gov/international/agreementsoverview.html</a>
State Governments and State Agencies Directory	<a href="http://www.statelocalgov.net">http://www.statelocalgov.net</a>
Transportation Department Business Services	<a href="http://www.dot.gov/business.html">http://www.dot.gov/business.html</a>
U.S. Commerical Service (connects U.S. and International companies)	<a href="http://www.buyusa.gov/home">http://www.buyusa.gov/home</a>





U.S. Chamber of Commerce	<a href="http://www.usachamber.com/default">http://www.usachamber.com/default</a>
U.S. Citizenship and Immigration Services	<a href="http://uscis.gov">http://uscis.gov</a>
U.S. Department of State	<a href="http://www.state.gov">http://www.state.gov</a>
U.S. Government Business Portal	<a href="http://www.business.gov">http://www.business.gov</a>
U.S. Government Regulatory Information	<a href="http://www.reginfo.gov">http://www.reginfo.gov</a>
U.S. Patent and Trademark Office	<a href="http://uspto.gov">http://uspto.gov</a>

## State Addresses and Contact Information

### Alabama

Alabama Development Office  
Industrial Development Office  
401 Adams Avenue  
Montgomery, AL 36130-4106  
Tel: 334.242.0400 | Fax: 334.242.0415  
Toll-Free: 800.248.0033  
Web: <http://www.dced.state.al.us>

### Alaska

Alaska Department of Commerce, Community & Economic Development  
550 W. Seventh Ave., Suite 1770  
Anchorage, AK 99501-3510  
Tel: 907.269.8110 | Fax: 907.269.8125  
Web: <http://www.dced.state.ak.us>

### Arizona

Arizona Department of Commerce  
Business Development & Attraction  
1700 W. Washington St. Ste. 600  
Phoenix, AZ 85007  
Tel: 602.771.1124 | Fax: 602.771.1207  
Web: <http://www.azcommerce.com>



## Arkansas

Arkansas Department of Economic Development  
900 West Capital  
Little Rock, AR 72201  
Tel: 501.682.1121 | Fax: 501.682.7394  
Toll-free: 800.ARKANSAS  
Web: <http://www.1800arkansas.com>

## California

California Labor & Workforce Development Agency  
California Business Investment Services  
801 "K" St., Suite 2101  
Sacramento, CA 95814-2719  
Tel: 916.327.9064 | Fax: 916.322.0614  
Web: <http://www.labor.ca.gov>

## Colorado

Colorado Office of Economic Development  
International Trade Office  
1625 Broadway, Suite 2700  
Denver, CO 80202-4725  
Tel: 303.892.3840 | Fax: 303.892.3848  
Web: <http://www.advancecolorado.com>

## Connecticut

Connecticut Department of Economic & Community Development  
International Division  
505 Hudson Street  
Hartford, CT 06106  
Tel: 860.270.8067 | Fax: 860.270.8016  
Web: <http://www.ct.gov/ecd>

## Delaware

Delaware Economic Development Office  
Business Development Section  
99 Kings Highway  
Dover, DE 19901  
Tel: 302.739.4271 | Fax: 302.739.5749  
Web: <http://www.state.de.us/dedo>



## **District of Columbia**

Office of Planning & Economic Development  
1350 Pennsylvania Avenue, NW, Suite 317  
Washington, DC 20004  
Tel: 202.727.6365 | Fax: 202.727.6703  
Web: <http://www.dcbiz.dc.gov>

## **Florida**

Enterprise Florida Inc.  
800 N. Magnolia Ave.  
Suite 1100  
Orlando, FL 32803  
Tel: 407.956.5600 | Fax: 407.956.5599

## **Georgia**

Georgia Department of Economic Development  
International Trade Division  
75 Fifth Street, NW Suite 1200  
Atlanta, GA 30308  
Tel: 404.962.4000 | Fax: 404.962.4142  
Web: <http://www.georgia.org>

## **Hawaii**

Hawaii Department of Business, Economic Development & Tourism  
Service Trade Branch  
P.O. Box 2359  
Honolulu, HI 96804  
Tel: 808.586.2423 | Fax: 808.587.2790  
Web: <http://www.hawaii.gov/dbet>

## **Idaho**

Idaho Department of Commerce  
International Business Division  
317 W. Main Street  
Boise, ID 83735  
Tel: 208.332.3570 | Fax: 208.334.6430  
Toll-free: 800.842.5858  
Web: <http://labor.idaho.gov>



## **Illinois**

Illinois Department of Commerce & Economic Opportunity  
Office of Trade & Investment  
100 West Randolph Street, Suite 3-400  
Chicago, IL 60601-3218  
Tel: 312.814.2828 | Fax: 312.814.6581  
Web: <http://www.commerce.state.il.us>

## **Indiana**

Indiana Economic Development Corporation  
1 North Capitol, Suite 700  
Indianapolis, IN 46204-2288  
Tel: 317.232.8800 | Fax: 317.232.4146  
Toll-free: 800.463.8081  
Web: <http://www.in.gov/iedc>

## **Iowa**

Iowa Department of Economic Development  
International Office  
200 East Grand Avenue  
Des Moines, IA 50309  
Tel: 515.242.4700 | Fax: 515.242.4809  
Web: <http://www.iowalifechanging.com>

## **Kansas**

Kansas Department of Commerce  
1000 SW Jackson Street, Suite 100  
Topeka, KS 66612-1354  
Tel: 785.296.3481 | Fax: 785.296.5055  
Web: <http://www.kansascommerce.com>

## **Kentucky**

Kentucky Cabinet for Economic Development  
Old Capital Annex  
300 West Broadway  
Frankfort, KY 40601  
Tel: 502.564.7140 | Fax: 502.564.3256  
Toll-free: 800.626.2930  
Web: <http://www.thinkkentucky.com>



## Louisiana

Louisiana Economic Development  
1051 North Third Street  
Baton Rouge, LA 70802-5239  
Tel: 225.342.3000 | Fax: 225.342.5349  
Toll-free: 800.450.8115  
Web: <http://www.lded.state.la.us>

## Maine

Department of Economic & Community Development  
Maine Office of Business Development  
59 State House Station  
Augusta, ME 04333  
Tel: 207.287.5701 | Fax: 207.541.7420  
Toll-free: 800.541.5872  
Web: <http://www.mainebiz.org>

## Maryland

Maryland Dept. of Business & Economic Development  
Office of International Business  
World Trade Center  
401 East Pratt Street  
Baltimore, MD 21202  
Tel: 410.767.6300 | Fax: 410.333.6792  
Toll-free: 888.CHOOSEMD (888.246.6736)  
Web: <http://www.choosemaryland.org>

## Massachusetts

Massachusetts office of International Trade & Investment  
Boston Fish Pier  
212 Northern Avenue  
East Building 1, Suite 300  
Boston, MA 02210  
Tel: 617.830.5400 | Fax: 617.457.7851

## Michigan

Michigan Economic Development Corp.  
300 North Washington Square  
Lansing, MI 48913  
Tel: 517.335.5975 | Fax: 517.241.0745  
Toll-free: 888.522.0103  
Web: <http://www.medc.michigan.gov/som>



## Minnesota

Department of Employment & Economic Development  
Minnesota Trade Office  
First National Bank Building, Suite E200  
332 Minnesota Street  
St. Paul, MN 55101-1351  
Tel: 651.297.4222 | Fax: 651.296.3555  
Toll-free: 800.657.3858  
Web: <http://www.exportminnesota.com>

## Mississippi

Mississippi Development Authority  
P.O. Box 849  
Jackson, MS 39205  
Tel: 601.359.3155 | Fax: 601.359.3605  
Web: <http://www.mississippi.gov>

## Missouri

Missouri Department of Economic Development  
301 W. High St.  
P.O. Box 1157  
Jefferson City, MO 65102  
Tel: 573.751.4962 | Fax: 573.751.7384  
Toll-free: 866.647.3633  
Web: <http://www.ded.mo.gov>

## Montana

Montana Department of Commerce  
Business Resources Division  
301 South Park Ave.  
P.O. Box 200501  
Helena, MT 59620-0501  
Tel: 406.841.2700 | Fax: 406.841.2701  
Web: <http://www.commerce.mt.gov>

## Nebraska

Nebraska Department of Economic Development  
Office of International Trade & Investment  
P.O. Box 94666  
301 Centennial Mall South, 4th Floor  
Lincoln, NE 68509-4666  
Tel: 800.426.6505 | Fax: 402.471.3778  
Web: <http://www.neded.org>





## **Nevada**

Nevada Commission on Economic Development  
555 East Washington Avenue  
Suite 5400  
Las Vegas, NV 89101  
Tel: 702.486.2700 | Fax: 702.486.2701  
Web: <http://www.diversifynevada.com>

## **New Hampshire**

New Hampshire Economic Development Division  
Business Resource Center  
172 Pembroke Road  
Concord, NH 03302-1856  
Tel: 603.271.2591 | Fax: 603.271.6784  
Web: <http://www.nheconomy.com>

## **New Jersey**

New Jersey Commerce, Economic Growth & Tourism Commission  
20 West State Street  
P.O. Box 820  
Trenton, NJ 08625-0820  
Tel: 609.777.0885 | Fax: 609.633.3675  
Web: <http://www.newjerserycommerce.org>

## **New Mexico**

New Mexico Economic Development Department  
1100 St. Francis Drive, Suite 1060  
Santa Fe, NM 87505  
Tel: 505.827.0300 | Fax: 505.827.0328  
Toll-free: 800.374.3061  
Web: <http://www.edd.state.nm.us>

## **New York**

Empire State Development  
International Division  
30 South Pearl Street  
Albany, NY 12245  
Tel: 212.803.2300  
Toll-free: 800.STATE.NY (800.782.8369)  
Web: <http://www.empire.state.ny.us/default.asp>



## North Carolina

North Carolina Department of Commerce  
301 N. Wilmington Street  
Raleigh, NC 27699-4301  
Tel: 919.733.4151 | Fax: 919.733.9299  
Web: <http://www.nccommerce.com>

## North Dakota

North Dakota Department of Commerce  
P.O. Box 2057  
1600 East Century Avenue, Suite 2  
Bismarck, ND 58503  
Tel: 701.328.5300 | Fax: 701.328.5320  
Web: <http://www.commerce.nd.com>

## Ohio

Ohio Department of Development  
Office of Business Development  
77 South High Street, 29th Floor  
Columbus, OH 43215-6130  
Tel: 614.466.4551 | Fax: 614.463.1540  
Toll-free: 800.848.1300  
Web: <http://www.odod.state.oh.us>

## Oklahoma

Oklahoma Department of Commerce  
Global Business Services  
900 North Stiles Ave  
Oklahoma City, OK 73104  
Tel: 405.815-6552 | Fax: 405.815.5199  
Toll-free: 800.879.6552  
Web: <http://www.okcommerce.gov>

## Oregon

Oregon Economic & Community Development Department  
775 Summer Street, NE, Suite 200  
Salem, OR 97301-1280  
Tel: 503.986.0123 | Fax: 503.581.5115  
Web: <http://www.oregon.gov>



## **Pennsylvania**

Pennsylvania Department of Community & Economic Development  
Office of International Business Development  
400 North Street, 4th Floor  
Harrisburg, PA 17120-0225  
Tel: 717.787.7190 | Fax: 717.772.5106  
Toll-free: 866.466.3972  
Web: <http://www.newpa.com>

## **Rhode Island**

Rhode Island Economic Development Corp., International Trade Division  
315 Iron Horse Way, Suite 101  
Providence, RI 02908  
Tel: 401.278.9100 | Fax: 401.273.8270  
Web: <http://www.riedc.com>

## **South Carolina**

South Carolina Department of Commerce  
1201 Main Street, Suite 1600  
Columbia, SC 29201-3200  
Tel: 803.737.0400 | Fax: 803.737.0418  
Web: <http://www.sccommerce.com>

## **South Dakota**

Governor's Office of Economic Development  
711 East Wells Avenue  
Pierre, SD 57501-3369  
Tel: 605.773.3301 | Fax: 605.773.3256  
Toll-free: 800.872.6190  
Web: <http://www.sdgreatprofits.com>

## **Tennessee**

Tennessee Department of Economic & Community Development  
312 Rosa L Parks Avenue  
11th Floor  
Nashville, TN 37243  
Tel: 615.741.1888 | Fax: 615.741.7306  
Web: <http://www.tnecd.gov>



## Texas

Office of the Governor  
Economic Development & Tourism  
International Business & Recruitment  
P.O. Box 12428  
Austin, TX. 78711-2428  
Tel: 512.936.0101 | Fax: 512.936.0080  
Web: <http://www.governor.state.tx.us>

## Utah

Governor's Office of Economic Development  
International Business Development  
324 S. State Street, Suite 500  
Salt Lake City, UT 84111  
Tel: 801.538.8700 | Fax: 801.538.8888  
Web: <http://gped.utah.gov>

## Vermont

Vermont Agency of Commerce & Community Development  
National Life Building, 6th Floor, Drawer 20  
Montpelier, VT 05620  
Tel: 802.828.3211 | Fax: 802.828.3383  
Toll-free: 800.622.4553  
Web: <http://www.dca.state.vt.us>

## Virginia

Economic Development Partnership  
P.O. Box 446  
Richmond, VA 23218-0446  
Tel: 804.371.8200 | Fax: 804.371.8111  
Toll-free: 866.248.8814  
Web: <http://www.dba.state.va.us>

## Washington

Washington State Department of Community, Trade & Economic Development  
Business & Project Development  
P.O. Box 42524  
128 10th Ave. SW  
Olympia, WA 98504-2525  
Tel: 360.725.4100  
Web: <http://www.choosewashington.com>



## West Virginia

Development Office  
Capitol Complex, Building 6, Room 553  
1900 Kanawha Blvd. East  
Charleston, WV 25305-0311  
Tel: 304.558.8000 | Fax: 304.558.0900  
Toll-free: 800.982.3386  
Web: <http://www.wv.gov>

## Wyoming

Wyoming Business Council  
214 West 15th St.  
Cheyenne, WY 82002-0240  
Tel: 307.777.2800 | Fax: 307.777.2838  
Toll-free: 800.262.3425  
Web: <http://www.wyomingbusiness.org>

