



## AMERICAN TRUCKING ASSOCIATIONS

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October 16 , 2006

Mr. Andrew Pantelides  
Assistant Director, Business Services  
Division of Revenue, Dept. of Treasury  
225 West State Street  
P.O. Box 308  
Trenton, NJ 08625

Dear Mr. Pantelides:

I am writing you concerning recent demands made by the Division of Revenue upon motor carriers incorporated in other states and engaged solely in interstate commerce in New Jersey to the effect that these must carriers obtain a certificate of authority from New Jersey, obtain a registered New Jersey agent, and file annual reports and pay associated fees or face sanctions up to \$5,000. Mr. Thomas MacDonald, the Division's Chief of Special Projects, indicated in a telephone conversation that a letter on this subject should be addressed to you. The American Trucking Associations (ATA) believes that the Division's demands on foreign motor carriers who conduct solely interstate commerce in New Jersey are unjustified and open to legal challenge under the U.S. Constitution. We request that Division to cease making such demands and to notify those motor carriers upon which such demands have been made that they need not comply with them.

ATA is the national trade association of the American trucking industry. It is a united federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the motor carrier industry. ATA's membership includes more than 2,000 trucking companies and suppliers of motor carrier equipment and services. Directly and indirectly through our affiliated organizations, ATA encompasses over 37,000 companies and every type and class of motor carrier operation. ATA's affiliate in New Jersey is the New Jersey Motor Truck Association. As the national representative of the trucking industry, ATA is vitally interested in matters affecting state licensing, tax, and other requirements on interstate motor carriers.

It is our understanding that over the last months, the Division has sent notices to interstate motor carriers that have paid New Jersey corporate business taxes, advising them that under New Jersey law (N.J.S.A. 14A:13-1, *ff.*) they must obtain a New Jersey certificate of authority to do

Good stuff.



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business from the Division. This entails a detailed filing with the Division and the maintenance of a registered agent in New Jersey. The notice explains that the cited statute requires a foreign corporation holding such a certificate to make an annual filing to maintain it and to pay a \$25 fee. For a foreign corporation, the penalty for failure to comply with the law is \$1,000 per year up to five years.

It is our understanding that the Division may have sent or may intend to send such notices to many thousands of interstate motor carriers whose operations in New Jersey are solely interstate in nature. These carriers have been caught up in New Jersey's ongoing nexus campaign against the interstate trucking industry (itself a program of questionable legality) and have paid corporate taxes to the state as a result.

The United States Supreme Court established long ago that a state may not, under the Commerce Clause of the United States Constitution, require an entity engaged within its borders solely in interstate commerce to be licensed as a condition of doing that business.<sup>1</sup> More recently, in *Eli Lilly & Co. v. Sav-on-Drugs, Inc., et al.*,<sup>2</sup> the Court confirmed this rule in the context of a New Jersey case involving the predecessor statute to the current N.J.S.A. 14A:13-1, *ff.* There, the Court said, "It is well established that New Jersey cannot require Lilly to get a certificate of authority to do business in the State if its ... trade is limited to its wholly interstate sales...."<sup>3</sup>

Subsequent to the *Eli Lilly* case, the Supreme Court again affirmed its view that a state may not require a purely interstate business to qualify to do business. In *Allenberg Cotton Co., Inc. v. Pittman*,<sup>4</sup> the Court said, "In short, appellant's contacts with [the State] do not exhibit the sort of *localization or intrastate character* which we have required in situations where a State seeks to require a foreign corporation to qualify to do business."<sup>5</sup> New Jersey courts have accepted this holding.<sup>6</sup>

In *First Family Mortgage Corp. of Florida v. Durham*,<sup>7</sup> in fact, the New Jersey Supreme Court distinguished at length the state's requirement that a foreign corporation having certain contacts with New Jersey file a business activities report from the requirement at issue here for a company to obtain a certificate of authority. The business activities report, the court found in *First Family*, was established for the purpose of determining whether a given company might

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<sup>1</sup> The "Drummer Cases," listed in part in *Memphis Steam Laundry v. Stone*, 342 U.S. 389, 392-93, at n.7.

<sup>2</sup> 366 U.S. 276 (1961).

<sup>3</sup> *Id.*, at 279.

<sup>4</sup> 419 U.S. 20 (1974).

<sup>5</sup> *Id.*, at 33. Italics supplied.

<sup>6</sup> *Coons v. American Honda Motor Co.*, 463 A.2d 921 (1983); *Oxford Consumer Discount Co. of North Philadelphia v. Stefanelli*, 250 A.2d 593 (N.J. Super. A.D., 1969).

<sup>7</sup> 528 A.2d 1288 (N.J., 1987).

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owe New Jersey corporate taxes. That did not amount, it continued, to the sort of “forced licensure” banned by the U.S. Supreme Court in *Eli Lilly* and *Allenberg Cotton*. The activities report, the court said, was merely an information-gathering tool, and its filing did not “result in any other consequences.”<sup>8</sup> This is a sharp contrast to the situation here, where the motor carriers have already paid New Jersey corporate taxes, and where obtaining a certificate of authority would obligate them to maintain a registered agent, to file annual reports, and to pay an annual fee.

For these reasons, then, ATA believes the Division’s demands that motor carriers doing solely interstate business in New Jersey are unconstitutional, and we request that the Division cease to send demands to purely interstate motor carriers that such carriers obtain certificates to do business in the state, and notify carriers that may have received such notices that they need not comply with them.

Sincerely,



Robert C. Pitcher  
Vice President, State Laws

cc: Governor Jon Corzine  
Dr. Carol O’Cleireacain, Acting Director of Taxation  
Myron P. Shevell, NEMF  
Gail Toth, NJMTA

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<sup>8</sup> Id., at 1294.