

## MEMORANDUM

**TO:** Members of P.L. 86-272 Work Group  
**FROM:** Brian Hamer  
**RE:** Summary of April 11, 2019 teleconference  
**DATE:** April 25, 2019

This is a high-level summary of the April 11 meeting (via teleconference) of the P.L. 86-272 Work Group. It is not intended to serve as minutes of the meeting but rather to highlight key matters that were addressed, in order to facilitate discussion at the next meeting to be held on April 30.

The meeting began with Holly Coon reminding the group that she will be stepping down as Work Group Chair and that Laurie McElhatton of California will serve as Chair going forward.

Ms. Coon summarized the two-step process that the Work Group has been using to determine whether a business loses its protection under by P.L. 86-272: (1) does the activity go beyond solicitation of orders for tangible personal property; and if so (2) does that activity take place in the taxing state.

The Work Group then returned to Scenario 2B--specifically to the question of whether providing post-sale customer assistance via email is a protected activity. The discussion then expanded to whether, for purposes of P.L. 86-272, a business that is located outside of a taxing state loses its immunity if it provides a service that is received by a customer in the taxing state, regardless of the means of transmitting that service. Participants discussed (1) whether there is a difference between emailing and communicating via telephone, (2) whether the location where a service is received is determinative, and (3) whether there is a difference between ordinary email and email accessed via a link on a website.

Ms. Coon called for a vote on the following question: for purposes of P.L. 86-272, does a business activity occur in a state if the seller provides a service to a person located in that state, regardless of how the service is provided, when the seller providing the service is located outside the state? Voting in the affirmative would mean that the business activity always occurs in the state. Work Group members voted 1 in the affirmative, 9 in the negative.

The Work Group then voted on whether providing a service via email that is not effectuated via a link on the seller's website is a business activity in the taxing state for purposes of P.L. 86-272 and therefore is not protected. The Work Group members voted unanimously in the negative, meaning that the activity is protected.

Ms. Coon reminded the Work Group that the Uniformity Committee will be meeting on Thursday, April 25 in Denver. Staff will report on the Work Group's deliberations to date and solicit feedback from the Committee. It will be possible for Work Group members who will not be present at the Committee meeting to call in. The P.L. 86-272 discussion will take place just before the lunch break; the agenda and the call-in information can be found on the MTC website.