

Draft: 10/24/19 [revised language to proposed Article IV.C.]

C. ACTIVITIES CONDUCTED VIA THE INTERNET:

To determine whether a person that sells tangible personal property via the Internet is shielded from taxation by P.L. 86-272 requires the same analysis as with respect to persons that sell tangible personal property by other means. Thus, such a seller is shielded from taxation in the customer's state if the only business activity in which it engages in that state is the solicitation of orders for sales of tangible personal property, which orders are sent outside that state for approval or rejection, and if approved, are shipped from a point outside of that state.

If such a seller engages in an activity via the Internet that: (i) extends beyond solicitation of orders for sales of tangible personal property, (ii) is neither ancillary to solicitation nor de minimis, and (iii) takes place in the customer's state, then P.L. 86-272 does not shield the seller from taxation by the customer's state.

As a general rule, when a company interacts with a customer via the company's website or app, the company engages in an activity in the customer's state. Presenting static text or photos on a website does not in itself constitute an activity in those states where customers are located.

Following are examples