



**MULTISTATE TAX COMMISSION**

*Maximizing the synergies of multi-state tax cooperation*

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**Updated Status Report Regarding State Adoption of "Phase III" Revision of Public Law 86-272 "Statement of Information"**

As of the above date, through enacted legislation, case law, administrative order, publication and the rulings of revenue directors, the following represents the adoption of the thirty-nine Multistate Tax Compact Members (compact, signatory and) "Phase III" revision of the *Statement of Information of Multistate Tax Commission and Signatory States Under Public Law 86-272*, adopted by the MTC on July 27, 2001 (hereinafter, "the Statement"). States that have adopted any version of the Statement in whole or in part are denoted with an asterisk by their names. The authority for the state's position is found in the middle column. In the event a state has not adopted or commented on the Statement, then the member states' most relevant position or method of determining exemption under PL 86-272 is provided. During the period that this report was initiated and completed, some states have begun the phase of adopting Phase III and this is noted in the table:

<b>Compact Member States</b>		
<b>Alabama*</b>	Enacted as <u>Code of Ala. 1975, §§ 40-2A-7(a)(5); 40-18-57</u>	Alabama deleted paragraph 19. under Article III "Unprotected Activities" Which reads: "Entering into franchising or licensing agreements; selling or otherwise disposing of franchises and

		<p>licenses; or selling or otherwise transferring tangible personal property pursuant to such franchise or license by the franchisor or licensor to its franchisee or licensee within the state and substituted it with the following: “Selling or otherwise transferring intangible personal property which is neither an isolated or transient event nor intrinsic in the related tangible personal property sold or transferred within the state. “</p> <p>With respect to section VI of the Phase II Statement “,Application of Destination State Law in Case of Conflict, “Alabama removes all permissive language; Alabama entitled its version of Article VII (e) “,Application of Attributional Nexus” rather than “Application of the <i>Joyce Rule</i>.”</p> <p>Finally, Alabama deleted limited prefatory material from some Articles of the Phase II Statement.</p>
<b>Alaska</b>	15 AAC 19.121. “When a state has jurisdiction to subject a taxpayer to a net income tax.”	Discretionary test that is leaves broad room for interpretation of federal statute.
<b>Arkansas</b>	Ark. Admin. Code 006.05.308-26-51-702 Alternatively cited as AR ADC 006 05 006	4.26-51-702 Solicitation of Orders Condition’s ability to solicit on approval out-of-state. For in-state activity to be protected under <a href="#">15 U.S.C. § 381</a> , it must be limited solely to the solicitation of orders that if approved,

		<p>will be filled by shipment or delivery from a point outside of Arkansas.</p> <p>Ancillary activities (defined within context “as related”) such as some marketing activities, are not ancillary, as <a href="#">15 U.S.C. § 381</a> does not protect activity that facilitates sales; <a href="#">15 U.S.C. § 381</a> only protects ancillary activities that facilitate the request for an order. Specifically (mentions marketing activities)</p>
<b>Colorado</b>	Colorado Department of Revenue Office of Tax Policy	At date of publication, the state is in the process of adopting Phase III of the Statement for its purposes.
<b>District of Columbia</b>	<p>“OTR'S GUIDANCE for QUESTIONS INVOLVING NEXUS”</p> <p><a href="http://otr.cfo.dc.gov/otr/lib/otr/information/pdf/tax_guide_nexus-110102.pdf">http://otr.cfo.dc.gov/otr/lib/otr/information/pdf/tax_guide_nexus-110102.pdf</a></p>	The District has not adopted a formal statute or regulation adopting the language of the Commission’s position. However, it has published policy statement adopting the Phase III statement.
<b>Hawaii</b>	TAX INFORMATION RELEASE NO. 95-3	Former Governor adopted Phase II completely, no signatory page for Phase III.
<b>Idaho</b>	15653, Tax Decision	Decision used the protected activities from Phase II Statement.

<p><b>Kansas</b></p>	<p>At the time of survey and publication. Questions about the state's interpretation of PL 86-272 should be directed to Mark Cardaleux in the Office of Policy and Research.</p>	<hr/>
<p><b>Michigan</b></p>	<p>Michigan Department of Treasury 4586 (Rev. 03-11), Page 1</p>	<p>Michigan heavily adopts the Phase III statement in a revenue form entitled "Michigan Business Tax (MBT) Schedule of Business Activity Protected Under Public Law 86-272."</p> <p>The form borrows language from sections I and II of the MTC statement and uses the same definition of ancillary activities provided in in the second paragraph of section II. <i>De Minimis</i> activities are not defined.</p> <p>Michigan has adopted all of the "Unprotected Activities" listed in section IV (A) with the exception of paragraph fourteen, "the maintaining of a sample or display room in excess of two weeks (14 days) at any one location with the state during the tax year." This activity is not listed amongst the protected activities on the form either. Michigan also adopted the language from section V ("Independent Contractors") and section VII (D) ("Loss of Protection for Conducting Unprotected Activity during the Part of Tax Year. Michigan applies the Joyce Rule and extends it to subsidiaries of unitary business group.</p>

<b>Minnesota</b>	Minnesota revenue notice, number 96-16	Minnesota has adopted the Phase II statement in majority through the publication of a revenue notice. Revenue notices are upheld only by revenue agents in practice and compliance and are not binding on a Minnesota tax court judge. The state's bulletin does not fully adopt the Commission's definition of <i>de minimis</i> . Minnesota has also adopted the MTC's nexus program bulletin (NB 95-1) relating to the provision of in-state repair services by computer companies.
<b>Missouri</b>	<u>Letter Ruling 6266</u> Sales Tax on Sales of Tangible Personal Property and Shipping Inside and Outside Missouri	Although written to address sales tax provides guidelines for income tax as well.
<b>Montana</b>	<u>Administrative Rules of Montana 42.26.501 - 511 (Updated 09/2011)</u>	Does not include paragraph 19 of section IV(A) of the Phase III statement as an unprotected activity. Paragraph 19 prohibits companies that have engaged in franchising or licensing agreements from qualifying from exemption under Public Law 86-272.
<b>New Mexico</b>	<u>FYI-350</u>	As of September, 2012, New Mexico still operates under Phase II of the statement and does not allow exemption for delivery on private carrier (previously paragraph twenty of section IV(A)).  New Mexico also has five additional criteria for determining whether an activity is protected by Public Law 86-272, they are: <ul style="list-style-type: none"><li>- The Corporation does not maintain a business location or</li></ul>

		<p>office in New Mexico.</p> <ul style="list-style-type: none"> <li>- The Corporation is not incorporated in New Mexico.</li> <li>- All sales occur in interstate commerce</li> <li>- The Corporation sells only tangible personal property in state.</li> <li>- All sales solicited in New Mexico are contingent on approval (acceptance) outside the state (New Mexico).</li> </ul>
<b>North Dakota</b>	<u>Republished Statement of Information in State Publications</u>	<a href="http://www.nd.gov/tax/business/pubs/">http://www.nd.gov/tax/business/pubs/</a>
<b>Oregon</b>	<u>Republished Statement of Information in State Publications</u>	<a href="http://www.oregon.gov/dor/bus/Pages/ic-102-695.aspx">http://www.oregon.gov/dor/bus/Pages/ic-102-695.aspx</a>
<b>Texas</b>	<p><u>STATE OF TEXAS</u>  <u>COMPTROLLER OF PUBLIC ACCOUNTS</u>  <u>FRANCHISE TAX</u></p> <p><u>§3.554</u></p>	Adopted as Phase II, does not include the language that distinguishes Phase II statement from Phase III.
<b>Utah</b>	<p><u>R865-6F-6. Application of Corporation Franchise or Income Tax Acts to Qualified Corporations and to Nonqualified Foreign Corporations Pursuant to Utah Code Ann. § 59-7-104.</u></p>	Through this Revenue Rule, Utah interprets several of parts of it tax code. It uses the same definitions for the terms “ <i>de minimis</i> ”, “ancillary” and “independent contractor” as set out in the Statement.

		Utah retains the right to annually change an activities “protected status.” Engaging in a franchise or license agreement is listed neither a protected or unprotected activity in Utah.
<b>Washington</b>	Det. No. 93-281, 14 WTD 035 (1994)	Adopts Phase II in language of Determination.
<b>Sovereignty Member States</b>		
<b>Georgia</b>	<p>“Frequently Asked C-Corporation Questions”</p> <p><a href="https://etax.dor.ga.gov/inctax/webfaq/faq-corp.aspx#q41">https://etax.dor.ga.gov/inctax/webfaq/faq-corp.aspx#q41</a></p>	<p>As a Sovereignty member, Georgia has specifically stated that it does not follow any of the regulations or policies of the Multistate Tax Commission:</p> <p><i>“..If a corporation is seeking exemption under PL 86-272 then it should complete all schedules on the Georgia return relating to income tax and attach a copy of Federal Form 1120 or 1120S. However, on line 8, Schedule 1 of Form 600 they should enter zero and they should attach a statement that indicates their belief that they fall under the protection of Public Law 86-272.”</i></p> <p>The supplemental statement mentioned above is examined by a revenue agent.</p>

<b>Kentucky</b>	Form - 10A100 (67)	During the registration process, the corporation self-elects exemption under PL 86-272 by demarking the appropriate check box.
<b>Louisiana</b>	Revenue Ruling No. 02-001; RIB 06-2003	Louisiana has not adopted the Statement, but, it has promulgated Revenue Information Bulletins and Rulings that define the terms “ancillary” and <i>de minimis</i> .
<b>New Jersey</b>	<p>SCHEDULE N - NEXUS - IMMUNE ACTIVITY DECLARATION (for Taxable Years Beginning On and After January 1, 2002)</p> <p><a href="http://www.state.nj.us/treasury/taxation/pdf/current/cbt/schnonafter.pdf">http://www.state.nj.us/treasury/taxation/pdf/current/cbt/schnonafter.pdf</a></p>	New Jersey has not adopted the Commission Statement. Beginning in 2002, all foreign corporations claiming immunity from taxation under Public Law 86-272 are required to complete a separate schedule to be filed along with the tax registration form. The questionnaire in “Schedule N,” duplicates the list of unprotected activities in the Phase III Statement.
<b>South Carolina<sup>1</sup></b>	<p>SC REVENUE RULING #97-15 <a href="http://www.sctax.org/Tax+Policy/Revenue+Ruling/rr97-15.htm">http://www.sctax.org/Tax+Policy/Revenue+Ruling/rr97-15.htm</a></p>	<p>South Carolina’s Department of Revenue published a revenue ruling (which is similar to and acknowledges “Phase II” of the Commission’s Statement) to assist taxpayers in determining whether Public Law 86-272 protects certain activities from South Carolina taxation. The ruling duplicates the Commission’s “Phase II” Statement (omitting sections VI and VII) and integrates it with the ruling from <i>Wrigley</i>.</p> <p>In South Carolina, maintenance of a stock</p>

<sup>1</sup> The statute’s subsequent language makes it unclear whether or not is superseded by Revenue Ruling 03-04. All questions should be forwarded to the state’s Nexus/Discovery Division.

		of goods in the state by the independent contractor does not automatically remove PL 86-272's protection, unlike other states that have adopted section IV of the MTC publication.
<b>West Virginia</b>	At the time of survey and publication West Virginia did not respond, all question on the state's policy as it relates to P.L. 86-272 should be forwarded to the state Department of Revenue.	-----
<b>Associate &amp; Project Members</b>		
<b>Arizona*</b>	Corporate Tax Ruling ("CTR") 99-5	Arizona's Tax Ruling was published before the Phase III Statement; It duplicates the language of Phase II however, "shipping" on a company-owned vehicle is still a protected activity so that the ruling and the current revision do not substantively differ.
<b>Connecticut</b>	CONNECTICUT DEPARTMENT OF REVENUE SERVICES IP 2010(29.1) <a href="http://www.ct.gov/drs/lib/drs/publications/pubsip/2010/ip2010-29.1.pdf">http://www.ct.gov/drs/lib/drs/publications/pubsip/2010/ip2010-29.1.pdf</a>	Connecticut has not adopted nor commented on the Statement. Its interpretation of PL 86-272 is published in a 2010 "Information Publication."

<p><b>Florida</b></p>	<p>Florida Revenue Rule 12C-1.011(1)  <a href="https://revenue.law.state.fl.us/LawLibraryDocuments/2012/03/FAC-27907">https://revenue.law.state.fl.us/LawLibraryDocuments/2012/03/FAC-27907</a></p>	<p>Florida’s law on when an economic tax will be imposed contains a list of “unprotected activities” that will subject a non-Florida corporation to the income or franchise tax. Among the list of unprotected activities are “making sales that are approved in the state by independent contractors who do not hold themselves out as engaged in selling, or soliciting orders for the sale of more than one principal; or making sales through the use of representatives in this state, when activities engaged in exceed those protected by P.L. 86-272.”</p>
<p><b>Illinois*</b></p>	<p>Title 86 Part 100 § 100.9720 Nexus  <a href="http://tax.illinois.gov/LegalInformation/regs/Part100/100-9720.pdf">http://tax.illinois.gov/LegalInformation/regs/Part100/100-9720.pdf</a></p>	<p>Illinois has adopted the Phase II language of the Statement. In addition the Illinois Department of Revenue has included language providing its own definition of “mere presence” and statutory provisions for those involved in the performance of “printing services.” Under Illinois law, the shipment of a good by a private carrier remains unprotected.</p>
<p><b>Indiana</b></p>	<p>45 IAC 3.1-1-38 “Definition of doing Business”  <a href="http://www.in.gov/legislative/iac/T00450/A00031.PDF">http://www.in.gov/legislative/iac/T00450/A00031.PDF</a></p> <p>DEPARTMENT OF STATE REVENUE  LETTER OF FINDINGS NUMBER: 06-0485  Income Tax For Tax Years 2001-2003  <a href="http://www.in.gov/dor/reference/legal/rulings/pdfs/0220060485lof.pdf">http://www.in.gov/dor/reference/legal/rulings/pdfs/0220060485lof.pdf</a></p>	<p>Indiana has not adopted any version of the Statement but has commented that the Department of Revenue may look at a taxpayer’s Indiana activities as a whole to determine if the activities as a whole exceed the protection of Public Law 86-272.</p>

<b>Iowa</b>	Iowa Administrative Code 701--52.1(2) & (3) "Corporate Activities (Not) Creating Taxability" <a href="https://www.legis.iowa.gov/DOCS/ACO/IAC/LINC/Rule.701.52.1.pdf">https://www.legis.iowa.gov/DOCS/ACO/IAC/LINC/Rule.701.52.1.pdf</a>	The Protected Activities and Unprotected Activities list in section IV of Phase III are re-created in Iowa's Administrative Code.
<b>Maine*</b>	BUREAU OF REVENUE SERVICES, INCOME & ESTATE TAX DIVISION Rule No. 808 (18-125 CMR 808) <a href="http://www.maine.gov/revenue/rules/html/rule808.html">http://www.maine.gov/revenue/rules/html/rule808.html</a>	Maine has adopted Phase III in part, as a revenue ruling for the purpose of determining when a foreign corporation is subject to its income tax jurisdiction. The ruling does not include language in reference to ancillary activities located in section III of the Statement. The Statement was adopted in 1994 and amended in the 2000s.
<b>Maryland</b>	Maryland Administrative Release No. 2 <a href="http://taxes.marylandtaxes.com">http://taxes.marylandtaxes.com</a>	Maryland has not adopted the statement in any form or portion. It has created an "Administrative Release" which defines "solicitation" and lists several "unprotected activities" in language that does not comport with the Statement.
<b>Massachusetts</b>	830 CMR 63.39.1 <u>Corporate Nexus</u>	Massachusetts appears to have substantially adopted the format and language of the Phase II revision. Several of the Statement's miscellaneous provisions were adopted as well, excepting the <i>Joyce</i> Rule. Shipment by a private carrier fulfilled out of state is not a protected activity nor is it expressly unprotected in the language of the regulation.
<b>Mississippi</b>	Mississippi Regulations Title 35 Part III Subpart 08 Chapter 06 <a href="http://www.dor.ms.gov/info/rules/Part_III_effective_20090701.pdf">http://www.dor.ms.gov/info/rules/Part_III_effective_20090701.pdf</a>	In 2009, Mississippi adopted section IV of the Phase III Statement in totality as well as two of its Miscellaneous Provisions from section VI. The Mississippi also uses the Commission's analysis for "Scope of Solicitation," but place it after the list of

		<p>protected and unprotected activities.</p> <p>Note: In the regulation, unprotected activities are referred to as “Non-Immune Activities” and protected activities as “Immune Activities.”</p>
<b>Nebraska</b>	<p>Revenue Ruling 24-01-1  <a href="http://www.revenue.ne.gov/legal/rulings/rr240101.html">http://www.revenue.ne.gov/legal/rulings/rr240101.html</a></p>	<p>Nebraska has not adopted any part or version of the Statement. It has released a statement based on the decision in <i>National Private Truck Council</i>.</p>
<b>New Hampshire</b>	<p>Rev 304.01(d) Availability or Requirement of Apportionment for Business Organization  <a href="http://www.gencourt.state.nh.us/rules/state_agencies/rev300.html">http://www.gencourt.state.nh.us/rules/state_agencies/rev300.html</a></p>	<p>New Hampshire has adopted section IV of the Phase III Statement in its entirety as well as several miscellaneous provisions.</p>
<b>New York</b>	<p>20 CRR-NY 1-3.4.9</p>	<p>New York substantially adopted section IV of the Phase III statement. Several unprotected activities have been added to those listed in the Statement, these appear to be state specific and related to the unique real estate concerns of the state as well as its investments industry. The state has defined <i>de minimis</i> and ancillary on its own.</p>
<b>North Carolina</b>	<p>17 NCAC 5C.0102(a)(4)</p>	<p>North Carolina has not adopted any version of the Statement and leaves analysis for exemption pursuant to PL 86-272 to the determination of its statute that defines business activity.</p>
<b>Ohio</b>	<p>CFT 2001- 02 - Corporation Franchise Tax - Nexus Standards  <a href="http://www.tax.ohio.gov/corporation_franchise/information_releases/cft200102.aspx">http://www.tax.ohio.gov/corporation_franchise/information_releases/cft200102.aspx</a></p>	<p>NOTE: This applies to Ohio law before implementation of its Commercial Activity Tax. P. L. 86-272 does not affect the CAT.</p>

		Income tax: Ohio has completely adopted and follows the Phase III statement by reference. If an out-of-state corporation has nexus with this state and is not protected by any of the safe harbor provisions on pages 4-5 but relies solely upon the protection provided by P.L. 86-272, the out-of-state corporation will be subject to the net income basis franchise tax for its entire taxable year should its activities at any time during the taxable year exceed the protection of P.L. 86-272
<b>Oklahoma</b>	OAC 710:50-17-3	Oklahoma has not adopted any part or version of the Statement.
<b>Pennsylvania</b>	Corporation Tax Bulletin 2004-01 Application of P.L. 86-272 and <i>de minimis</i> standards.	Pennsylvania has adopted sections I-IV of the Phase III statement. The section on <i>de minimis</i> activities was placed after the list of unprotected activities and state-specific income and activity thresholds have been created.
<b>Rhode Island</b>	Regulation CT 95-02	Rhode Island Adopted Phase II in its entirety (with the exception of section VI and the <i>Joyce</i> Rule; however, it has created fulfillment of sales by private carrier from out of state as a protected activity so that its section IV does not differentiate from section IV of the Phase III revision.
<b>Tennessee</b>	TENNESSEE DEPARTMENT OF REVENUE LETTER RULING #95-22 <a href="http://www.state.tn.us/revenue/rulings/fae/95-22fe.pdf">http://www.state.tn.us/revenue/rulings/fae/95-22fe.pdf</a>	Tennessee has acknowledged by reference and citation the Phase II Statement.

<b>Vermont</b>	_____	Vermont has not adopted any version of the Commission's Statement.
<b>Wisconsin</b>	Tax 2.505 (1) <a href="http://docs.legis.wisconsin.gov/code/admin_code/tax/2/39">http://docs.legis.wisconsin.gov/code/admin_code/tax/2/39</a>	Wisconsin has not adopted any version of the Commission's statement and instead has created its own definition for ancillary and <i>de minimis activities</i> that leave a very broad interpretation of exemption under 86-272.

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