



GEOFFREY E. SNYDER
COMMISSIONER

The Commonwealth of Massachusetts
Department of Revenue
Office of the Commissioner
PO Box 9550
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To Whom It May Concern:

I write to support the Multistate Tax Commission's proposal to update its Statement concerning the current, proper interpretation of the 1959 federal statute, Public Law 86-272, which restricts a state's ability to impose a net income tax upon companies doing business in the state. My understanding is that the MTC Statement was last amended in 2001 and certainly commercial practices have changed dramatically since that time.

The MTC proposal appropriately modernizes the construction of this sixty-one-year-old federal statute. It also rightly acknowledges the fact that companies with operations based primarily outside of a state are sometimes engaged in a "business activity" in that state through activity that takes place on their customers' computers, phones or other personal devices. When this business activity is not limited to the "solicitation of orders ... for sales of tangible personal property" within the meaning of Public Law 86-272, this activity can, as the MTC proposal concludes, exceed the protections of that statute.

The MTC's proposal is consistent with the U.S. Supreme Court's holding in *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018), which stated that a company may be engaged in nexus-creating in-state business activity solely through virtual contacts. The MTC's proposal is also consistent with the position that the Massachusetts Department of Revenue previously adopted in a sales tax regulation, 830 CMR 64H.1.7. That Massachusetts regulation has been legislatively superseded, but formerly deemed an out-of-state vendor to have nexus with Massachusetts when it has a property interest in or uses (1) in-state software, including apps, and (2) ancillary data, such as cookies, which are distributed to or stored on the computers or other physical communications devices of the vendor's in-state customers. See 830 CMR 64H.17(b)(2)a. The Massachusetts regulation recognized that this vendor software and data could establish tax jurisdiction for the vendor because, among other things, it can enable the vendor to make use of its customers' computers and physical devices.

For reasons like those referenced in the Massachusetts regulation, a company's software or data as operative on its customers' in-state computers and devices may enable the company to engage in "business activity." This activity, as the MTC's proposal properly recognizes, should be evaluated under the terms of Public Law 86-272.

Geoffrey E. Snyder

A handwritten signature in dark ink, appearing to read "G. Snyder", with a stylized, cursive script.

Commissioner of Revenue
Massachusetts Department of
Revenue