



MULTISTATE TAX COMMISSION

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## Report on Uniformity Developments

For the MTC Uniformity Committee April 2021



# MTC Uniformity Committee in the News

## On Partnership Related Issues –

### Resurrection of MTC National Nexus Bulletins on the Table

Tax Analysts – December 17, 2020 – News Stories

by Amy Hamilton

Members of a Multistate Tax Commission subcommittee have raised the possibility of reviving the organization’s “National Nexus Bulletin” guidance while brainstorming the different forms that work on the state taxation of partnerships might take.

### MTC Studying State Sourcing of Passthrough Income

Tax Analysts – November 16, 2020 – News Stories

by Amy Hamilton

The Multistate Tax Commission’s Uniformity Committee is analyzing the need for model rules for the sourcing of passthrough business income; separately, the group advanced technical corrections to the model for reporting IRS partnership adjustments.

### MTC Studying State Sourcing of Passthrough Income (November 9, 2020)

Tax Analysts – November 9, 2020 – News Stories

by Amy Hamilton

The Multistate Tax Commission’s Uniformity Committee is analyzing the need for model rules for the sourcing of passthrough business income; separately, the group advanced technical corrections to the model for reporting IRS partnership adjustments.

### MTC To Study Taxation, Sourcing Of Pass-Through Income

Law360 – November 5, 2020 - News

By Paul Williams

A Multistate Tax Commission committee took initial steps Thursday to identify where states can achieve uniformity in sourcing and treatment of income from pass-through businesses, referring the matter to a subcommittee.

# MTC Uniformity Committee in the News

## On P.L. 86-272 –

Inside the P.L. 86-272 Talks: De Minimis and Purposeful Direction (June 15, 2020)

Tax Analysts – June 15, 2020 – News Stories

by Amy Hamilton

The minority position on the Multistate Tax Commission group updating national guidance on P.L. 86-272 supported expanding the concept of protected de minimis non-solicitation activities and making purposeful direction of internet contacts a determining factor.

The Catch-22 of Public Law 86-272

Tax Analysts – May 18, 2020 – Viewpoint

by Jamie C. Yesnowitz, Chuck Jones, and Sonia Shaikh

In this installment of 'Taking SALT for Granted', the authors analyze Maryland's Blue Buffalo decision and its impact on interstate taxpayers, and the Multistate Tax Commission work group's recent developments to promulgate uniform guidelines for P.L. 86-272's application.

MTC to Hold Public Hearings on Finnigan, P.L. 86-272 Projects

Tax Analysts – May 27, 2020 – News Stories

by Amy Hamilton

News Stories

The Multistate Tax Commission's Executive Committee on April 23 voted to send to separate public hearings the projects on alternative Finnigan apportionment model language and draft revisions to guidance on P.L. 86-272 addressing internet transactions.

The Ordinary Diet of the Law: How to Interpret Public Law 86-272

Tax Analysts – April 13, 2020 - Viewpoint

by Darien Shanske and David Gamage

Darien Shanske and David Gamage argue that a proper, fair reading of Public Law 86-272 should not involve expanding its coverage to protect current business practices that differ from the practices that Congress specifically intended to protect at the time of the statute's enactment.

# MTC Uniformity Committee in the News

## On P.L. 86-272 –

### Remote Sellers Could Have Income Tax Duties in Multiple States

Bloomberg – April 22, 2020 - News

Michael J. Bologna and Tripp Baltz

The commission's Uniformity Committee approved a report Wednesday reinterpreting Public Law 86-272, a 1959 federal law prohibiting states and local taxing jurisdictions from imposing income taxes on out-of-state businesses for activities limited to soliciting sales of tangible personal property. The report now heads to the commission's Executive Committee for consideration, one of two recommendations made Wednesday.

### Guidance Makes Clear MTC Position On Online Biz Tax Shield

Law360 – June 25, 2020 - News

By Maria Koklanaris

Even though states can't regulate a federal law protecting certain businesses from state income taxes, the Multistate Tax Commission's draft guidance on interpreting the law for internet activity is important to provide guidance to taxpayers.

### MTC Advances State Tax Guidance For Online Biz Activity

Law360 – November 20, 2020 - News

By Paul Williams

A Multistate Tax Commission project to interpret when certain internet business activities exceed federal protections against state income taxes was advanced by a key committee Friday after receiving the report of the Hearing Officer.

### MTC Backs Nexus Safe Harbor For Online Small Business

Law360 – July 27, 2020 - News

By Paul Williams

States that may consider certain internet activities to fall outside the scope of federal protections against state-level income taxes should adopt a nexus safe harbor for small businesses, a Multistate Tax...

# MTC Uniformity Committee in the News

## On P.L. 86-272 –

### Inside the P.L. 86-272 Talks: Physical Presence Rears Ugly Head Tax

Tax Analysts - September 28, 2020 – News Stories

by Amy Hamilton

Attendees of two forums in August clashed over whether physical presence defines the Multistate Tax Commission's effort to update guidance on P.L. 86-272 to address internet activities, and disagreed about the appropriateness of Wayfair reliance.

### Tatarowicz to MTC: Delay Proposed Changes Until After COVID-19

Tax Analysts - August 6, 2020 - Other State Documents

Author submitted comments cautioning the Multistate Tax Commission to delay approval of the proposed revisions to the MTC's model statement of information concerning practices of MTC and signatory states under Public Law 86-272...

### COST to MTC: Reject Proposed Revisions to Model Statement

Tax Analysts - August 6, 2020 – Other

The Council On State Taxation provided comments to the Multistate Tax Commission in opposition to the proposed revisions to the MTC model statement of information concerning practices of MTC and signatory states under Public Law 86-272.

### MTC Pushes for States to Adopt Factor Presence Nexus Standard

Tax Analysts – August 3, 2020 – News Stories

by Amy Hamilton

As state policymakers consider their positions on the applicability of P.L. 86-272 to internet activities, the Multistate Tax Commission is urging them to also take a look at adopting its model factor presence nexus standard.

### More Focus on History and Context of P.L. 86-272 After Bostock

Tax Analysts – June 26, 2020 – News Stories

by Andrea Muse

A recent U.S. Supreme Court decision in an employment discrimination case brings more focus on the history and context of P.L. 86-272 when interpreting the statute for purposes of modern business activities, according to practitioners.

# MTC Uniformity Committee in the News

## On P.L. 86-272 –

### A Failure in Statutory Interpretation: The MTC and P.L. 86-272

Tax Analysts - April 12, 2021 - Viewpoint

by Marty Dakessian and Michael Penza

Authors contend that the Multistate Tax Commission's recent revisions to its statement of information regarding P.L. 86-272 are improperly guided by policy judgments and fail to abide by the fundamental rules of statutory construction.

### An Insider's View of the MTC's P.L. 86-272 Project

Tax Analysts - March 22, 2021 - Viewpoint

by Brian Hamer

Author reviews the Multistate Tax Commission's revisions to its statement of information regarding P.L. 86-272 and reactions to its proposal.

### Changes to 'Business Activity' on the Horizon? Revisions Proposed by the Multistate Tax Commission

CPA Journal - Feb/Mar 2021 – Article

By Corey L. Rosenthal, Arvinder Kaur, and Dilnora Isaeva

Discussing the filing requirements that might be imposed under the MTC's P.L. 86-272 interpretation.

### MTC Draft Policy on P.L. 86-272: Marketplace Facilitator Concerns

Tax Analysts December 14, 2020 - Viewpoint

by Rick Handel and Brittnee Pool

Authors consider the MTC's positions on marketplace facilitators and independent contractors.

### MTC Draft Policy on P.L. 86-272: Electronic Communications Concerns

Tax Analysts - October 18, 2020 - Viewpoint

by Rick Handel and Brittnee Pool

Authors discuss issues the MTC does not consider and issues arising from electronic communications.

# MTC Uniformity Committee in the News

## On P.L. 86-272 –

### Decades-Old Biz Tax Shield Unconstitutional, Official Says

Law 360 - October 27, 2020 - News

By Maria Koklanaris ·

A recent discussion of P.L. 86-272, a 61-year-old federal law protecting certain businesses from state income taxes, focused in part on whether the law is unconstitutional.

### Congress Avoids Changes To Biz Tax Shield, Panelists Say

By Maria Koklanaris · March 24, 2021, 7:57 PM EDT

Congress likely won't significantly update a 62-year-old law insulating businesses from tax on net income when soliciting tangible personal property orders is their only connection to a state, panelists say.

*and finally this . . .*

### MTC Projects on P.L. 86-272, Finnigan Set for Final Adoption

Tax Analysts – April 26, 2021 – News Stories

By Amy Hamilton

The Multistate Tax Commission will vote this summer on final adoption of proposed updated national guidance on the application of P.L. 86-272 and on alternate Finnigan language to accompany the organization's combined reporting model statute.

# Status of Uniformity Proposals

## Combined Filing Alternative *Finnigan* Model

- What the proposal does:
  - Existing model uses the *Joyce* separate-entity approach to calculate the in-state share of unitary group income and excludes receipts of entities that lack separate-entity nexus from the apportionment factor.
  - Proposed alternative *Finnigan* model uses a single-entity approach and includes all receipts of the unitary group.
  - Also uses a federal consolidated-style approach to the calculation of the NOL carryover.
- Status:
  - The MTC conducted a public hearing in June 2020.
  - A majority of the surveyed Compact and Sovereignty member states have now responded positively to the proposed model and so it will proceed to the Commission at its annual business meeting this year.

## Revisions to Statement on P.L. 86-272

- What the proposed revisions do:
  - Address sellers who perform activities with respect to customers and markets within a state through the Internet.
- Status:
  - The MTC conducted a public hearing in August 2020.
  - Brian Hamer, MTC counsel who staffed the project, has written an article for STN, now posted on our website, that addresses some issues that have been raised – especially about the process and purpose.
  - A majority of the surveyed Compact and Sovereignty member states have now responded positively to the proposed revisions and so they will proceed to the Commission at its annual business meeting this year.



# Developments – Adopted Models

## Model for Reporting Federal Adjustments – Partnership Provisions

- The model takes sets out an approach for assessing state tax on federal partnership adjustments from federal audits or administrative adjustment requests.
- States that have adopted legislation in this area (and the approach generally taken):

Adopted - MTC Approach:	Pending - MTC Approach:	Other:
Georgia	Minnesota	Arizona
Kentucky	Michigan	California
Massachusetts		Hawaii
Missouri		Rhode Island
Montana		
New Mexico		
Ohio		
Oregon		
West Virginia		

# Developments – Adopted Models

## Market-Based Sourcing – Recent Adoptions (Year Applicable and MTC or Other Approach)

- New Jersey – 2019 (Other)
- Colorado – 2019 (MTC)
- Hawaii – 2020 (Other)
- North Carolina – 2020 (Other)
- New Mexico – 2020 (MTC)
- Vermont – 2020 (MTC)
- West Virginia – 2022 (MTC)

Now – 70%-plus of states with a corporate income tax use market-based sourcing.

**NOTE:** The MTC is currently preparing a video-taped training program for market-based sourcing, being produced by MTC staff and Michael Fatale of Massachusetts. That training should be available for states in the coming months. We will be sending out more information shortly.

# Developments – Adopted Models

## Model Mobile Workforce Statute –

- In 2006, federal legislation—the Mobile Workforce State Income Tax Fairness and Simplification Act (federal proposal)—was introduced for the first time in Congress. This act would have preempted states from imposing withholding tax obligations on employers unless they were physically present and performing duties in the state for longer than 60 days.
- That federal proposal continued to be introduced in successive Congresses, with the days-threshold shortened to 30 days. The Federation of Tax Administrators had a series of meetings with a chief proponent of the federal proposal—the Council On State Taxation (COST), discussing provisions in that proposal that would create enforcement and administrative difficulties for states.
- In 2009, the MTC Executive Committee asked the Uniformity Committee to take up a project to draft a model state tax statute that would create a withholding threshold. At that time less than half of the states had a days-threshold, although most of the states had a minimum dollar threshold that would have applied to nonresident employees.
- In 2011, the Commission eventually adopted a model for recommendation to the states. That model proposed a 20-day threshold as well as a high-dollar exception and requirements for record-keeping that were not contained in the federal legislation.
- Since that time, only one state, North Dakota, has adopted the model (although at least two states adopted shorter thresholds).

# Developments – Adopted Models

## Model Mobile Workforce Statute –

- In 2020, a new issue—permanent remote workers in states where a business might otherwise have no other presence—began to be discussed due to conditions created by the Covid19 pandemic.
- In November, following the last Uniformity Committee Meeting, the NCSL asked Doug Lindholm, COST, and Helen Hecht, MTC, to speak on the subject of mobile workforce and remote worker issues to their task force on state and local taxes.
- Following that NCSL meeting, COST provided us with a draft of their state legislative proposal. That draft followed closely the federal legislation that had been introduced in passed Congresses. MTC staff prepared a comparison of the MTC model and the COST proposal – and that comparison is posted on our home page along with a summary of issues.
- Recently – bills have been introduced in state legislatures following the COST approach, including:
  - Kansas – H.B. 2105
  - Louisiana – S.B. 157
  - Arkansas – S.B. 484
- On April 21, 2021, S. 1275 – the Remote and Mobile Worker Relief Act was introduced in Congress.

**NOTE:** Thanks to Thomas Shimkin, MTC Legislative Counsel, for this information. If you are interested in being on the mailing list for the MTC legislative newsletter, contact Tom at [tshimkin@mtc.gov](mailto:tshimkin@mtc.gov).

# Developments – Other

## *Wayfair* and Marketplace Implementation

- The MTC Uniformity Committee undertook a project to do a white paper on the issue—part of a work group headed up by Tommy Hoyt, Chair and Steven Alvarez, Georgia, and staffed by Richard Cram, MTC Nexus Director.
- That group has been effectively disbanded in the last year.
- Richard Cram and the Nexus Committee are continuing to follow these developments – information on that issue is included on the committee’s agenda on the MTC website.
- At the Nexus Committee meeting, the committee also heard a presentation from the Streamlined Sales and Use Tax group on the development of their disclosed practice matrix. The purpose of this matrix is to capture the state answers to common practitioner and taxpayer questions. We encourage states who are not members of Streamlined to follow up with that organization about how they can participate in the disclosed practices matrix.