



MULTISTATE TAX COMMISSION

DEVELOPMENTS REPORT

APRIL 29, 2025

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NOTE:

This presentation was provided to the MTC Uniformity Committee at its meeting on April 29, 2025 for its consideration and discussion. For other information on this project, please see the MTC website – [MTC.gov](https://www.mtc.gov).

P.L. 86-272 GUIDANCE

In 2021, the MTC revised its Statement of Information Concerning Practices on P.L. 86-272.

- **Recent Developments:**
 - The Massachusetts tax agency recently proposed amendments to its regulations concerning the application of P.L. 86-272 and scheduled a hearing on those amendments for April 29, 2025.
 - The New Jersey tax agency proposed regulations that incorporate some of the MTC statement's guidance prospectively.
 - Like similar proposals in California and New York, these actions have been opposed by industry.

P.L. 86-272 GUIDANCE

In 2021, the MTC revised its Statement of Information Concerning Practices on P.L. 86-272.

- Recent Developments:
 - Rep. Scott Fitzgerald, R-Wis., has reintroduced legislation to amend P.L. 86-272 – Interstate Commerce Simplification Act of 2025. H.R. 427.
 - It would define the term “solicitation of orders” as “business activity that facilitates the solicitation of orders even if that activity may also serve some independently valuable business function apart from solicitation.”
 - The bill has been referred to the House Judiciary Committee. Three Republican House members from Wisconsin have signed on as cosponsors.

P.L. 86-272 GUIDANCE

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■ Recent Developments:

- Congressional Research Service published:
The Evolution of P.L. 86-272's State Income Tax Immunity for Income Derived from Interstate Commerce – Published Feb. 21, 2025

“In 2021, the Multistate Tax Commission (MTC), an intergovernmental state tax commission whose mission includes the promotion of “uniform and consistent tax policy and administration among the states,” issued an update to its Statement of Information Concerning Practices of the Multistate Tax Commission and Supporting States Under Public Law 86-272. The updates to the statement generally provide that out-of-state businesses’ interactions with in-state customers via the internet should be considered in-state business activity for the purpose of P.L. 86-272.”

P.L. 86-272 GUIDANCE

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■ Recent Developments:

■ CRS Report cont'd.

“Some tax commentators contend P.L. 86-272 immunity is eroding as states begin to ‘effectively follow[] the MTC’s approach.’ They emphasize that the updated statement designates an internet seller’s ‘commonplace activities’ as in-state business activities that defeat P.L. 86- 272 immunity. These activities include providing post-sale product use assistance to in-state customers via electronic chat or email; inviting in-state website viewers to apply for nonsales positions; using ‘cookies [to] gather customer search information’ to adjust production and inventory; and remotely fixing or upgrading products in-state customers previously purchased by transmitting code or electronic instructions over the internet.”

P.L. 86-272 GUIDANCE

In 2021, the MTC revised its Statement of Information Concerning Practices on P.L. 86-272.

- **Recent Developments:**

- CRS Report cont'd.

“Congress has introduced several legislative measures to clarify the scope of P.L. 86-272 immunity. The Business Activity Tax Simplification Act (BATSA) has been introduced multiple times. BATSA would have extended P.L. 86-272’s protection to digital goods and prohibited a state from taxing income derived from interstate commerce unless the business had a physical presence in the taxing state or was domiciled there.”

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In 2021, the MTC revised its Statement of Information Concerning Practices on P.L. 86-272.

- **Recent Developments:**

- CRS Report cont'd.

“The Interstate Commerce Simplification Act would have expanded the definition of ‘solicitation of orders’ to include an activity that facilitates solicitation even if that activity also serves an ‘independently valuable business function apart from solicitation.’ Congress might also consider legislation that responds to specific provisions, in the MTC’s updated statement, that designate certain activities, including activities conducted over the internet, as not protected under P.L. 86-272.”

P.L. 86-272 GUIDANCE

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- Other Recent Developments:
 - Supreme Court declined to take a case out of Oregon (*Santa Fe Natural Tobacco Co. v. Oregon Department of Revenue*) raising questions about the application of P.L. 86-272.

MTC LEGISLATIVE NEWSLETTER

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