MULTISTATE TAX COMMISSION

UNIFORMITY DEVELOPMENTS

Report to the MTC Uniformity Committee

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P.L. 86-272 LITIGATION –

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- In New York state – the *American Catalog Mailers Association* is on appeal. The lower court held the interpretation was valid but could not be applied retroactively.
- NYC has also recently said it will follow the state's approach.

THIS ALSO CONTINUES TO GET A LOT OF PRESS & COMMENTARY

"The MTC is effectively repealing P.L. 86-272."	No, we're not. Our revised statement recognizes solicitation is protected, including when done via the Internet.
"States are not authorized to regulate P.L. 86-272."	We agree. No one is. And that's not what we're doing.

THIS IS ALWAYS THE PROBLEM WITH ANY FEDERAL PREEMPTION LAWS

Statutes are worded very, very GENERALLY and there is no regulatory agency authorized to issue necessary guidance.

Statutes are never updated even when commerce changes substantially (like it has in the last 65 years more than any other time in all of human history . . .)

Litigation is slow, often only addresses fact-specific issues, and the results are never “universal” unless issued by the U.S. Supreme Court.

NOR IS THE USE OF "INTENT" HELPFUL

- The U.S. Supreme Court has said the Constitution grants states taxing nexus based on certain business activities directed at a state (and its markets) whether or not they are performed physically within the state.

- So—did Congress really intend to treat two businesses with the same activities and the same amount of sales in a state differently depending on where they physically perform those activities? (That's a lot to assume.)

WHAT DOES THE MTC REVISED STATEMENT DO?

- Assumes Congress intended the protection to apply equitably.
  - If the business activities connected with the state creating income tax nexus are limited to solicitation – the business is protected.
  - If substantial unprotected activities are directed at the state—whether physically within the state or through equivalent means—then the business is not protected.

IN ADDITION

- The statement provides taxpayers with information on the state's position on interpretation and application of P.L. 86-272 so they can assess their risks.

- The MTC has also recommended to states that they adopt the factor presence nexus standard to provide a bright-line test for substantial nexus.

PARTNERSHIP AUDITS –

A SHORT HISTORY AND RECENT DEVELOPMENTS

- During the 80's and 90's partnership income grew at a faster pace.
- Private equity and private debt markets accelerated this growth.
- Partnership structures also became larger and more complex, including international partnerships.
- 10 years ago, Congress recognized that the IRS couldn't possibly audit these large partnerships and trace, adjust, and assess the issues at the partner level. So it passed the Bi-Partisan Budget Act of 2015—giving the IRS the authority to audit, adjust, and assess at the entity level.

A SHORT HISTORY AND RECENT DEVELOPMENTS

- This system depends on proper funding and staffing.
- Efforts to fund and staff the large partnership audit function began in earnest about 5 years ago—funding, recruiting, hiring, and training audit staff and investing in resources and guidance for practitioners and taxpayers.
- That effort is now being curtailed.

WHY IT MATTERS TO STATES

- The primary benefit to states in conforming to the federal tax system is efficiency in enforcement.
- Audits serve a critical function by identifying issues and determining if there are other tools necessary for enhancing compliance.
- Audits also serve to help lawmakers focus on critical gaps or holes in the law that need addressing.
- Audit policy should be fair—focusing more effort those issues where non-compliance may have the greatest impact to the overall system.