MULTISTATE TAX COMMISSION

UNIFORMITY DEVELOPMENTS

Report to the MTC Uniformity Committee

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HELEN HECHT, MTC UNIFORMITY COUNSEL

P.L. 86-272 –

P.L. 86-272 LITIGATION

American Catalog Mailers Association v. Department of Taxation and Finance, No. CV-25-0865 (N.Y. App. Div. May 7, 2026).

The NY Court:

- Noted this was a facial challenge.
- Recognized that the NY guidance does not have the effect that a regulation of state law would have.
- Found that NY's supposed reliance on *Wayfair* was largely irrelevant.

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The Court:

- Rejected plaintiff's argument that the rules would effectively tax all Internet commerce – saying, no, it merely treats Internet and traditional commerce the same.
- Noted that there may very well be factual scenarios where the Internet activity would not have a sufficient nexus with the state.

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The Court :

- Applied textualism properly (in the opinion of this author)—rejecting the argument that Congress could not have possibly meant activities “within the state” to include Internet commerce since the Internet didn’t exist in 1959, saying:

  “The text of the statute, however, is framed in functional terms, requiring consideration of the nature or purpose of the business activity, not the means through which that activity is conducted.”

P.L. 86-272 LITIGATION

The Court:

- Recognized that the intent of Congress was to provide a clear bright-line rule for small businesses to reduce risk and uncertainty.

P.L. 86-272 LITIGATION

But the Court noted:

"... the details and examples the Department wrote into the challenged regulation — particularly those in subsection (i) — promote rather than inhibit Congress' original goal of clarity by providing guidance to foreign corporations for which, if any, of their Internet-based activities will, and will not, be considered solicitation, activities entirely ancillary thereto or de minimis in New York State (see 20 NYCRR 1-2.10 [i])."

P.L. 86-272 LITIGATION

Smithfield Packaged Meets Corp. v. Commissioner, No. C344811, (Mass. Appellate Tax Bd. Jul. 22, 2026).

- Application of P.L. 86-272 in the context of Massachusetts Finnigan approach determining the tax of a combined group.
- Board ruled for the taxpayer and rejected contrary decisions from courts in other states.

P.L. 86-272 LITIGATION

The Board concluded that:

- "... the statute does not simply limit a state's ability to tax an out-of-state entity by asserting taxing jurisdiction directly over that entity. The income earned by a P.L. 86-272 protected entity is tax exempt, without qualification. On whose tax return that income is reportable is not relevant.

P.L. 86-272 LITIGATION

The Board concluded that:

- " . . . support cannot be found in the wording of P.L. 86-272 or its legislative history for the proposition that the term "person" includes the multiple entities that make up a combined group. . . . Enacted at a time when the unitary business principle had already been recognized, it speaks in terms of a "person" whose only business activities within a state are the solicitation in the state of orders of the type described therein – a unitary group per se does not solicit orders in a state, only an individual member of the group can.

BRIEFING BOOK ON NCTI –

REACTIONS TO THE BRIEFING BOOK

- Not much in terms of reactions.
- One commentator posited that NCTI is *not* attributed income but a deemed dividend.
- We think this is clearly wrong.

REACTIONS TO THE BRIEFING BOOK

- The federal government no longer taxes dividends, at all.
- Even the deemed repatriation tax (enacted to transition away from taxing dividends) has been equated with <u>attributed income</u> (including partnership income). See *Moore v. United States*, 602 U.S. 572 (2024).

REACTIONS TO THE BRIEFING BOOK

- Some states have taxed only a small part of dividends (because factor representation is difficult) and have given traditional Subpart F income the same treatment <u>under their law.</u>
- But whether states tax a portion of NCTI or conform to the federal treatment and provide factor representation is a matter of state law.

FEDERAL PARTNERSHIP AUDITS –

WHAT SHOULD THE STATES EXPECT?

- There is ongoing reporting on the IRS's inability to effectively implement the centralized partnership audit regime—mainly due to lack of resources and disruptions within the agency.
- This puts more of the enforcement burden on the states.

WHAT CAN STATES DO?

- Clear rules for reporting and sourcing partnership income (so taking other filing positions is curtailed).
- Continue to review withholding, composite, PTE, and pass-through reporting for anomalies.
- Review information reporting requirements and provide detailed guidance.
- Train staff and let them focus on partnership issues—which are very specialized.