



**MULTISTATE NEXUS DETERMINATION/TAXABLE SALES (SUT)/APPORTIONMENT (SIT)**

**ESTABLISHING NEXUS FOR INCOME TAX PURPOSES**

**ESTABLISHING NEXUS FOR SALES TAX PURPOSES**

Income tax nexus governed by PL 86-272 – law relates to establishing nexus for taxes based on net income; does NOT set standards for non-net income tax based systems, e.g. gross receipts tax, privilege tax, tax based on net capital, state’s minimum income taxes, or many others.

Wayfair US Supreme Court Decision  
June 21, 2018

**SALES OF ONLY TPP**

**SALES OF TPP &/OR SERVICES/INTANGIBLES**

Physical presence is no longer required to establish nexus, but creates nexus.

Into Net Income Tax-Based State

Into Non-Net Income Tax-Based State

- PL 86-272 INTERPRETATION & APPLICATION:**
1. Only protects solicitation of orders of TPP into a true net income tax based state
  2. Does not cover sales or use of intangibles or services
  3. Approval of sales orders must be made outside state (except by Independent Contractors)
  4. Hired shipment or self-delivery must originate outside of state
  5. Immunity lost by incorporating within state; however, statute silent as to the consequences of qualifying or registering to do business with a state; but several state courts and taxing authorities have held that qualification/registration does not cause loss of immunity
  6. Trivial activity immunity

States that impose tax based on a measurement other than net income are not subject to the “protection” of PL 86-272;

- Sales of TPP into such states will have corporate filing requirement
- Note: the presence of a minimum tax not subject to PL 86-272 does not create income tax nexus

PL 86-272 does not cover sales or use of intangibles or services; also, immunity is lost if taxpayer engages in mixed sales (TPP plus intangibles and/or services)

- In addition, states adopted threshold nexus standards.
- 2018/2019 enforcement dates.
- Threshold dollars and/or transactions.
- Threshold computations: gross, retail or taxable sales. Varies by state.
- 50% Streamlined sales tax states.
- [streamlinedsalestax.org](http://streamlinedsalestax.org)
- Streamlined CAS providers.
- Streamlined CSP providers.
- Hope for Federal intervention.

Common Exemptions from Taxable Sales

- Exempt Goods/Services
- Used for Resale
- Used in Manufacturing
- Federal Gov’t Buyer
- State/Local Gov’t Buyer
- Tax Exempt Buyer (Charitable/Religious)
- Direct Pay Permit

Interpretation of PL 86-272 immunity made at state level. Varied state participation in UDITPA and MTC.

**IF PROTECTED**

**IF NOT PROTECTED**

No Nexus and No Filing Requirement

Likely nexus based on each state’s income tax nexus policy; i.e., Whether Nexus is Based On

*even if* →

(1) Physical Presence

(2) Economic Presence

(3) State Agency Registration

(4) Factor Presence Nexus Standards

Nexus is triggered by employees or property in state

Nexus is triggered by certain amount of economic activity in the state even though no physical presence

- Registration as a foreign company.
  - Government vendor/contractor.
  - Sales tax registration.
  - Payroll tax registration.
  - State licenses; general or specialized.
  - Worker’s Compensation registration.
- States are mixed whether these activities create bright-line nexus.

Uses both economic and physical presence to determine nexus. Nexus triggered only if certain thresholds are exceeded during tax period for each type of contact (threshold examples, indexed for inflation each year):

- a. 50,000 of prop
- b. 50,000 of payroll
- c. 500,000 of sales or
- d. 25% of total property, payroll or sales

- Apportionment of Income Tax: Single factor vs. three factor. TPP, Services & Intangible.
- Apportionment of Income Tax: Throwback, Throw-out, No-where. Destination state?
- Dock Sales: State of consumption or state of delivery.
- Drop Ship Sales: Wholesaler not in state of origin or destination.
- Foreign Sales: Factory state or port state.
- Taxes not determinable by net income. Subject to sourcing rules.

January 1, 2020. The information and illustrations contained herein is general in nature, in a brief executive format and based on authorities subject to change. The Wayfair Supreme Court Case dated June 21, 2018 significantly changed States ability to expand their tax statutes. Since that date, most States have begun the process of amending their tax statutes for the purpose of extending their reach of taxation to remote sellers and marketplace facilitators. As new guidance continues to be issued, and as tax strategies begin to develop in response, it may alter some or many of the conclusions you might draw from this executive summary. Applicability to your specific business circumstances should be determined through consultation with your tax advisor, and only after discussion should any conclusions be drawn.