



This Week in State Tax (TWIST)

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New Jersey: Division Adopts New Nexus P.L. 86-272 Guidance; Incorporates Aspects of MTC Statement

The New Jersey Division of Taxation recently released a Technical Bulletin (TB-108) addressing Corporation Business Tax (CBT) nexus for privilege periods ending on and after July 31, 2023. The Bulletin notes that Assembly Bill 5323 adopted a bright line economic nexus standard for CBT purposes. Notably, a corporation deriving receipts exceeding \$100,000 from in-state sources or that has 200 or more separate transactions delivered to New Jersey customers during the taxable year will be deemed to have substantial nexus with New Jersey for privilege periods ending on and after July 31, 2023. The Bulletin makes clear that a corporation with sales/transactions below these thresholds may still have New Jersey nexus if the corporation's activities/contacts with the state are nevertheless sufficient to establish jurisdiction. A corporate partner will have nexus with New Jersey if the corporate partner's proportionate share of a unitary partnership's activities in New Jersey satisfies the bright-line economic thresholds. In the context of unitary business groups, a group member may be taxable if it meets the economic nexus standards regardless of whether the receipts are the member's own receipts or are receipts derived from intercompany transactions with other members of the combined group that are eliminated in computing the return.

The Bulletin also addresses New Jersey's previously announced policy to follow tax treaties unless a combined group is filing on a worldwide basis. A non-U.S. corporation that is a member of a water's-edge combined group or an affiliated group will be a taxable member if it has nexus with New Jersey. However, treaty protected income (or loss) will be excluded from the income of the combined group. If a non-U.S. corporation separate return filer has nexus with New Jersey and all its income (or loss) are protected by a tax treaty, the corporation will still be required to file a return and pay the Corporation Business Tax minimum tax.

Finally, the Bulletin addresses P.L. 86-272 and confirms that if one group member exceeds P.L. 86-272 protection, then no group member may claim protection. The Bulletin also sets forth a list of activities that, in the Division's view, would cause a taxpayer to lose or retain P.L. 86-272 protection. Importantly, this list incorporates aspects of the Multistate Tax Commission's revised statement on P.L. 86-272. Certain of the enumerated unprotected activities are not particularly surprising given that P.L. 86-272 protection applies to sellers of tangible personal property only. Therefore, sellers of digital assets, NFTs, streaming services, or Internet advertising, or businesses that provide services related to such items, would not be protected under P.L. 86-272. Certain of the activities listed, however, may apply to a seller of tangible personal property that has a website or app. For example, the Bulletin treats placing software or ancillary data (e.g., apps or "internet cookies") on computers and devices in New Jersey to gather market or product research that is packaged and sold to data brokers or other third parties, and providing post-sales assistance through an electronic chat, email, or application that customers access through the company's website, as

unprotected activities. Inviting and/or accepting applications for employment through an Internet-based platform that is not specifically targeted to in-state residents or for in-state job positions, other than for sales positions, is also an activity that may cause the loss of P.L. 86-272 protection. Please contact [Jim Venere](#) with questions on TB-108.

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