



NYC DEPARTMENT OF FINANCE
LEGAL AFFAIRS DIVISION
375 PEARL STREET, 30TH FLOOR
NEW YORK, NY 10038

Re: Comments on Proposed Amendments to the Business Corporation Tax, pursuant to Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code of the City of New York.

On behalf of National Taxpayers Union Foundation (“NTUF”), we write with comments on the Department of Finance’s notice and request for public comment on proposed changes to corporate income tax nexus and interaction with federal Public Law 86-272, also known as the Interstate Income Act of 1959.

Introduction

For nearly five decades, NTUF has striven to give policymakers the tools to make informed, pro-taxpayer policy choices. Our Interstate Commerce Initiative has sought to draw attention to the growing problem of states and localities taxing and regulating taxpayers outside their borders, often with little regard to the impact on the broader national economy.

The proposed rules would double down on the state government’s misguided attempt to handwave away existing federal law, placing the City of New York in the same legal jeopardy that the State currently finds itself in, as well as creating undue compliance burdens for the small remote retailers that rely on the protection of P.L. 86-272 to be able to access a nationwide market and compete with larger retailers without needing to retain armies of accountants and tax experts.

P.L. 86-272 Is Still In Effect, and the Proposed Rules Violate it

P.L. 86-272 prohibits states (and their sub-jurisdictions) from imposing business income tax obligations on out-of-state sellers solely on the basis of:

“the solicitation of orders by such person, or his representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State.”

The proposed rules critically undermine these protections by baselessly designating basic functions of a modern retail website as outside the scope of P.L. 86-272’s protections. Activities listed as unprotected under the proposed rule include offering virtual chat-based customer service (Example 7), accepting submission of job applications through the website (Example 9), and the use of digital “cookies” for any functions defined by the Department as not being entirely ancillary to solicitation of orders (Example 10).

In all these cases, remote businesses are being told that by virtue of offering New York City consumers convenience, they will face new tax burdens. Were a New York City resident to travel to an out-of-state business's retail location to ask a customer service question, or to turn in a job application, that business would not have New York City income tax liability. It makes little sense to punish businesses for allowing New York City residents a more convenient, digital alternative.

More than just violating the spirit of P.L. 86-272, the proposed regulations put the city in legal jeopardy as well. Defining basic business activities as outside the scope of P.L. 86-272 renders the circumstances in which businesses can sell to New York City customers and still enjoy the law's protections so narrow as to be nearly impossible to satisfy. Any interpretation of federal law by a state or its sub-jurisdictions that effectively voids that law deserves scrutiny by the courts.

Indeed, the state is currently embroiled in legal challenges over its similar reinterpretation of P.L. 86-272,¹ and New York City risks similar litigation if it should move ahead with these changes. Federal legislation has also been introduced in both chambers of Congress that would reinforce P.L. 86-272's language, casting further doubt on the claim that P.L. 86-272 is an archaic provision with no relevance in today's modern economy.

Multistate Income Tax Compliance is Hard Enough for Small Businesses Without Multi-City Compliance

Legal questions aside, subjecting more small businesses to tax compliance obligations is bad policy. The largest businesses based out-of-state have income tax compliance obligations in New York City already, and have the in-house accounting capacity to manage those obligations.

For small businesses that are lucky to have a single individual dedicated to tax compliance, complying with different income tax regimes in multiple states is hard enough — adding in compliance in local jurisdictions only exacerbates the problem. These compliance burdens can be even more significant than the actual tax being remitted, as compliance entails significant costs in the form of compliance software licenses, employee hours dedicated to accounting, and audit risk. They fall disproportionately heavily on smaller businesses.

Conclusion

New York City should not compound the mistakes of the state government by adopting the same punitive regulatory interpretation of P.L. 86-272. The law remains an important protection that allows small businesses to operate competitively in an increasingly digitized economy —

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<https://www.taxnotes.com/tax-notes-today-state/jurisdiction-tax/acma-appeals-new-york-trial-courts-p.l-86-272-decision/2025/07/11/7srfw>

undermining these protections will lead to an economy where only businesses with massive state and local tax accounting operations can operate.

Thank you for your consideration. I am happy to answer any additional questions at andrew.wilford@ntu.org.