



This Week in State Tax (TWIST)

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Minnesota: State Supreme Court Holds Market Research Exceeds P.L. 86-272

In a P.L. 86-272 (15 U.S.C. secs. 381-384) case demonstrating the fine line between protected and unprotected activities, the Minnesota Supreme Court held that collection of marketing information by sales representatives fell outside the scope of the law's protection. The taxpayer ran an industrial and packaging product business from Wisconsin but employed sales representatives who met regularly with Minnesota customers. After each customer visit, the representative was required to prepare a summary of sales information from the visit. They were also required to periodically develop more extensive reports containing marketing information about the customer's needs (including bulk pricing requests, complaints about product or service quality, needs for certain products, and purchases from competitors). The marketing reports were recorded in a data base available to various parts of the company. The taxpayer filed its 2014 and 2015 Minnesota returns, claiming its in-state activities were protected by P.L. 86-272. The Department of Revenue found the taxpayer was liable for tax for several reasons. The taxpayer appealed, and the Department's position was upheld by both the commissioner of revenue and the state tax court. The taxpayer further appealed to the state supreme court.

On appeal, the sole question was whether the activities of the sales representatives exceeded solicitation, and if so, were they de minimis and still protected? The court concluded the collection of sales-related information following each customer visit was protected under P.L. 86-272. It did hold, however, that the collection, preparation and reporting of broader market information on customers was not entirely ancillary to solicitation. It further held that the activity was not de minimis as the collection of marketing data was "regular and systematic" and over 1,600 individual market notes were collected over a two-year period. In reaching its decision, the court pointed to the separate documentation of sales and marketing data as evidence that the marketing data had some purpose outside the sales context and noted that the data was shared outside the sales department. For more information on [Uline, Inc. v. Commissioner of Revenue](#), please contact [Matthew Saunders](#).

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