

This Week in State Tax (TWIST)

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Massachusetts: DoR adopts new regulation regarding P.L. 86-272

The Massachusetts Department of Revenue recently updated its regulation governing corporate nexus to provide that certain Internet business activities will be considered in determining if a corporation has exceeded the protections of P.L. 86-272 and thus may be subject to the Commonwealth's corporate excise tax.

Recall, P.L. 86-272 prohibits states and localities from imposing a tax on or measured by net income on businesses whose only in-state activity is the solicitation of orders of tangible personal property when such orders are fulfilled from an out-of-state location. The updated regulations specifically added the following example as unprotected activities under P.L. 86-272: "... in-state activities that are conducted by a vendor through an Internet website accessible by persons in the state may include activity that is not entirely ancillary to the solicitation of orders of tangible personal property, such as the placement of Internet cookies onto the computers or other electronic devices of in-state customers that gather customer search information used to adjust production schedules and inventory amounts, develop new products, or identify new items to offer for sale." Please contact [Nikhil Sequeira](#) for questions about [Regulation 830 CMR 63.39.1](#).

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