



This Week in State Tax (TWIST)

May 6, 2024



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Multistate: Introduced Federal Legislation Would Amend P.L. 86-272

On April 16, 2024, Representative Fitzgerald Scott of Wisconsin introduced H.R. 8021, the “Interstate Commerce Simplification Act of 2024.” If enacted, this bill would amend section 101(d) of P.L. 86-272 to add a definition of the term “solicitation of orders.” Recall, P.L. 86-272 prohibits a state from imposing a net income tax on a person if the person’s only business activities within the state are the solicitation of orders for sales of tangible personal property (and certain other conditions are met). Under current U.S. Supreme Court jurisprudence, most notably the Wrigley case, solicitation means activities that are “entirely ancillary to requests for purchases—those that serve no independent business function apart from their connection to the soliciting of orders.” H.R. 8021 would define “solicitation of orders” to mean any “business activity that facilitates the solicitation of orders even if that activity may also serve some independently valuable business function apart from solicitation.” As such, this would broaden the scope of permissible activities to include activities that have some independent business function. As currently drafted, the bill does not extend the scope of P.L. 86-272 to sales of other than tangible personal property or provide guidance on where business activities are deemed to occur, especially in instances when they are conducted over the Internet. Please stay tuned to TWIST for future updates.

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