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Minn. Floats Adopting MTC's New P.L. 86-272 Guidance, Law360 Tax Authority

Jennifer Karpchuk quoted in an Article in Law360 Tax Authority

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In an article that published in Law360 Tax Authority on April 28, 2023, Philadelphia-based Shareholder and S.A.L.T Practice Co-Chair Jennifer Karpchuk discusses Minnesota's recent adoption of Minnesota Tax Commissions (MTC) new guidance on federal law Interstate Income Act of 1959, also known as P.L. 86-272. The article outlines that the law protects businesses from a state's tax on net income when the soliciting of tangible personal property orders is their only connection to that state, and the MTC's guidance lists which online activities, such as post-sale assistance to customers, it considers falling outside the law's protections.

The proposed guidance raises many concerns about retroactive policies and protections for small businesses and has faced backlash from other states that have implemented similar policies. For example, California is facing a lawsuit from the American Catalog Mailers Association, which is arguing that the state's adoption of the MTC guidelines was invalid because it was done without the formal notice and comment procedures required under the state's Administrative Procedure Act. Karpchuk, shared Minnesota could be vulnerable to similar arguments if it adopts the MTC guidance through a revenue notice.

"We have experienced Minnesota acting particularly aggressive on P.L. 86-272 cases in income tax audits and nexus audits recently," she said. "States that are going to take aggressive P.L. 86-272 positions should provide public notice and should not present such positions for the first time on audit."

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