

Income/Franchise:

California FTB Says Certain Internet-Based Activities Fall Outside of P.L. 86-272 Protections

Technical Advice Memorandum (TAM) 2022-01, Cal. Fran. Tax Bd. (2/14/22). In a five-page technical advice memorandum (TAM 2022-01) addressing whether the protections of P.L. 86-272 apply to several listed fact patterns that are “common in the current economy due to technological advancements” for California income and franchise tax purposes, the California Franchise Tax Board (FTB) indicates that many internet-based activities involving California customers may disqualify businesses from P.L. 86-272 “immunity,” because they do not constitute, and are not entirely ancillary to, the in-state solicitation of orders for sales of tangible personal property. Among the FTB’s conclusions are the following:

URL: <https://www.ftb.ca.gov/tax-pros/law/technical-advice-memorandums/2022-01.pdf>

- Regarding a business that places internet “cookies” onto the computers or other electronic devices of California customers that gather customer search information that will be used to adjust production schedules and inventory amounts, develop new products, or identify new items to offer for sale, such activity disqualifies the business from P.L. 86-272 protections because it is not related to facilitating sales of tangible personal property;
- Regarding a business that remotely fixes or upgrades products previously purchased by California customers by transmitting code or other electronic instructions to those products via the internet, such activity disqualifies the business from P.L. 86-272 protections because providing repairs or upgrades to previously sold products are not activities related to facilitating the request for orders for sales of tangible personal property but rather are “post-sales activities;” and
- Regarding a business that contracts with California customers to stream videos and music to electronic devices for a charge, such activity disqualifies the business from P.L. 86-272 protections because sales of digital video and music streaming are not sales of tangible personal property but instead constitute services.

Please contact us with any questions.

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