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Jun. 30, 2022

<b>Form 1040</b>		Department of the Treasury—Internal Revenue Service (99)		<b>2021</b>		OMB No. 1545-0074		IRS Use Only—Do not write or staple in this space.	
<b>Filing Status</b> <input type="checkbox"/> Single <input type="checkbox"/> Married filing jointly <input type="checkbox"/> Married filing separately (MFS) <input type="checkbox"/> Head of household (HOH) <input type="checkbox"/> Qualifying widow(er) (QW) Check only one box. If you checked the MFS box, enter the name of your spouse. If you checked the HOH or QW box, enter the child's name if the qualifying person is a child but not your dependent ▶									
Your first name and middle initial				Last name				Your social security number	
If joint return, spouse's first name and middle initial				Last name				Spouse's social security number	
Home address (number and street). If you have a P.O. box, see instructions.								Apt. no.	
City, town, or post office. If you have a foreign address, also complete spaces below.						State		ZIP code	
Foreign country name				Foreign province/state/county				Foreign postal code	
								<b>Presidential Election Campaign</b> Check here if you, or your spouse if filing jointly, want \$3 to go to this fund. Checking a box below will not change your tax or refund. <input type="checkbox"/> You <input type="checkbox"/> Spouse	
At any time during 2021, did you receive, sell, exchange, or otherwise dispose of any financial interest in any virtual currency? <input type="checkbox"/> Yes <input type="checkbox"/> No									
<b>Standard Deduction</b> <b>Someone can claim:</b> <input type="checkbox"/> You as a dependent <input type="checkbox"/> Your spouse as a dependent <input type="checkbox"/> Spouse itemizes on a separate return or you were a dual-status alien									
<b>Age/Blindness</b> <b>You:</b> <input type="checkbox"/> Were born before January 2, 1957 <input type="checkbox"/> Are blind <b>Spouse:</b> <input type="checkbox"/> Was born before January 2, 1957 <input type="checkbox"/> Is blind									
<b>Dependents</b> (see instructions): If more than four dependents, see instructions and check here ▶ <input type="checkbox"/>									
(1) First name Last name				(2) Social security number		(3) Relationship to you		(4) <input checked="" type="checkbox"/> If qualifies for (see instructions):	
								Child tax credit Credit for other dependents	
								<input type="checkbox"/> <input type="checkbox"/>	
								<input type="checkbox"/> <input type="checkbox"/>	
								<input type="checkbox"/> <input type="checkbox"/>	
								<input type="checkbox"/> <input type="checkbox"/>	
<b>1</b> Wages, salaries, tips, etc. Attach Form(s) W-2									
<b>2a</b> Tax-exempt interest <b>2a</b> <b>b</b> Taxable interest									
<b>1</b> <b>2b</b>									

By Richard Feldman.

As electronic commerce continues to grow and business practices evolve, states have struggled to ensure their taxing systems remain relevant and current. The historic *Wayfair* decision significantly shifted and expanded nexus laws across states for sales tax and has also impacted income tax.

State filing requirements are imposed on businesses that have nexus with a particular

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delivered through a third-party vendor located out of state would not have met the minimum connection standard.

## **Wayfair Decision**

The 2018 Supreme Court *Wayfair* decision changed everything when it allowed the state of South Dakota to enforce a sales tax collection requirement on Wayfair Inc. despite it having no presence in the state. As a result of the *Wayfair* decision, states were given the authority to assert *economic nexus*, which could be based on a business having sales in a state without any physical presence.

Additionally, states established sales and transaction thresholds that, when exceeded, are considered economic nexus and require the business to register and collect sales tax. Today, virtually every state that has a sales tax imposes economic nexus thresholds for sales tax purposes. While thresholds vary by state, many use a threshold of \$100,000 of sales or 200 transactions.

## **Economic Nexus for Income Taxes**

Although *Wayfair* was strictly a sales tax case, states have also begun to assert *economic nexus* for income tax purposes. Unlike sales tax, currently only a handful of states have established thresholds for income and franchise tax purposes, including AL, CA, CO, CT, HI, MA, MI, NY, OH, PA, TN, TX, VA and WA. Other states are likely to follow.

## **PL 86-272**

Historically, the determination of nexus for income tax was similar to sales tax and relied only on physical presence. However, for income tax purposes there is an exception that allows a slight physical presence – yet protects businesses from the

assertion of nexus. Under a federal statute, The Interstate Income Act of 1959, known

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activity permitted would cause the business to lose the protection provided by PL 86-272 and allow the state to assert nexus and create a filing and tax obligation for the business. Since PL 86-272 only applies to income taxes, its protection is not applicable in states that have gross receipts taxes or certain franchise taxes.

In recent years, with the increase of e-commerce, the definition of solicitation and what it means for PL 86-272 has become an area of contention. Since the solicitation of sales is a protected activity, it must be determined what is considered solicitation in the context of e-commerce when the solicitation is done over the internet and not by a salesperson physically present in the state.

### **Updated Guidance**

In 2021, the Multistate Tax Commission (MTC) issued guidance regarding which activities conducted over the internet were protected by PL 86-272. The guidance indicated that a static internet site only selling tangible personal property would not exceed the mere solicitation of sales when it was accessed in a state. However, virtually any other type of interaction with the customer via the website could potentially exceed the mere solicitation guidelines and thus lose the protection of PL 86-272 and subject the business to income taxation.

While the MTC guidance is not enforceable, states have begun to adopt it in various ways. In February 2022, California issued a memorandum dealing with protected and nonprotected activity conducted over the internet in relation to PL 86-272. In April, New York issued draft regulations on the same matter. The guidance provided by the MTC was closely mirrored by both states.

As the modern economy and the way businesses operate continues to evolve, states will need to update their rules and regulations. It's imperative that businesses and

their advisors stay current with ever-changing state compliance requirements and

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