

February 22, 2001

Corporate Income Tax -- Nexus. SHIPPING OR DELIVERING GOODS INTO THIS STATE BY PRIVATE VEHICLE FROM A POINT OUTSIDE THIS STATE DOES NOT CREATE NEXUS FOR INCOME TAX PURPOSES.

Advice has been requested as to whether the delivery of goods into this state by a company, using its own vehicles, is a protected activity under Public Law 86-272 ("P.L. 86-272").

P.L. 86-272, codified at 15 U.S.C. §381, places certain limits on the power of a state to impose a tax on the income derived from within its borders.

In two recent state tax cases, *Department of Taxation v. National Private Truck Council*, 480 S.E.2d 500 (Virginia, 1997) and *National Private Truck Council, Inc. v. Commissioner of Revenue*, 688 N.E.2d 936 (Mass., 1997), it was held that companies soliciting in-state orders that are approved and filled from a point outside of the state are protected under P.L. 86-272, regardless of whether the goods are delivered by common or private carriage.

Congress did not identify the manner of delivery necessary to qualify for the immunity when it enacted 15 U.S.C. §381. *National Private Truck Council*, supra, at 502. "[S]ection 381 does not specify common carrier, contract or private carrier, or any other particular method of delivery. In the absence of a qualification in the federal statute, the Department may not add conditions to, or otherwise limit, the protections offered by §381. . . " *Id.*

Therefore, deliveries into this state by a company using its own vehicles is protected activity under P.L. 86-272. Such deliveries by themselves are not sufficient to create nexus for income tax purposes. As a result, having no other contact with this state other than mere solicitation, the company has no income tax filing obligation with this state.

APPROVED:



Mary Jane Egr
State Tax Commissioner

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