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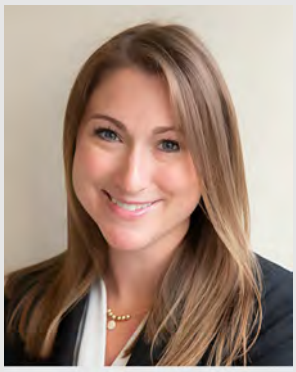

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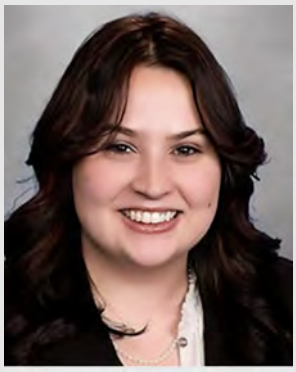

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In this installment of Pennsylvania's SALT Shaker, Karpchuk and Klein examine significant state and local tax decisions that were made in the United States throughout 2025, including issues around P.L. 86-272, unemployment tax exemptions for charities, sourcing disputes, and the "jock tax."

The year 2025 produced significant state and local tax decisions across all areas of the SALT practice. Courts and administrative agencies tackled issues involving P.L. 86-272, unemployment tax exemptions for charities, sourcing disputes, and the "jock tax." This article explores some of the rulings and developments that shaped the SALT practice throughout 2025.

P.L. 86-272

Despite the fact that Congress has failed to amend P.L. 86-272 since its enactment in 1959, states have continued to issue challenges to the law. In 2021 the Multistate Tax Commission issued revised guidance on P.L. 86-272 addressing the increased use and prevalence of the internet to conduct business transactions. Since the MTC issued its revised guidance, states have attempted to adopt changes limiting the protections of P.L. 86-272 each year. In 2025 three states addressed the MTC's revised guidance through the rulemaking process.

New York

In 2023 New York became the first state to formally adopt the MTC's revised guidance, and the regulation has been under scrutiny since. Under N.Y. Comp. Codes R. & Regs. tit. 20, section 1-2.10(f), New York provides a list of 16 examples that exceed and do not exceed P.L. 86-272 protections. These examples substantially mirror the MTC's revised guidance. However, section 1-2.10(f) was made retroactive to tax years beginning January 2015.

In response, on April 5, 2024, the American Catalog Mailers Association (ACMA) filed suit against the New York State Department of Taxation and Finance, challenging New York's P.L. 86-272 regulations.[1] In a motion for summary judgment, the ACMA argued that section 1-2.10(f) violates the supremacy clause of the U.S. Constitution.[2] The ACMA took issue with the language "activities engaged in via the Internet"

[1] Verified complaint, *American Catalog Mailers Association v. Department of Taxation and Finance*, Index No. 903320-24 (N.Y. Sup. Ct. Albany County Apr. 5, 2024).

[2] Motion for summary judgment, *American Catalog Mailers Association*, Index No. 903320-24 (N.Y. Sup. Ct. Albany County Aug. 29, 2024).

in section 1-2.10(d) and argued that it improperly expands New York's power to impose income taxes on sellers that do not conduct business activities within the state.[3] Further, the ACMA asserted that the department's attempt to apply section 1-2.10(f) retroactively to tax year 2015 violates ACMA members' due process rights.[4]

On April 25, 2025, the New York State Supreme Court of Albany County partially dismissed the ACMA's motion for summary judgment.[5] The court held that the regulations in section 1-2.10(f) do not violate the supremacy clause because P.L. 86-272 does not prohibit states "from identifying and regulating which internet activities are construed to constitute more than solicitation of orders."[6]

However, the court agreed with the ACMA that the retroactive application of section 1-2.10(f) violates the due process clause of the 14th Amendment.[7] The court found that the retroactive application is excessive and did not provide the ACMA with any opportunity to alter its behavior to adapt to the new regulation.[8] Finally, the court found that the department failed to provide a valid public purpose for the retroactive application of section 1-2.10(f).[9] The case is under appeal to the Appellate Division, Third Department.[10]

New Jersey

Following closely behind New York, in 2023 New Jersey issued TB-108 and informally announced that it would follow the MTC's revised P.L. 86-272 guidance. On June 16, 2025, New Jersey became the second state to formally adopt the revised guidance and establish guidelines for when certain internet activities exceed P.L. 86-272 protections.[11] The language of N.J. Admin. Code section 18:7-1.9A is substantially similar to the revised guidance issued by the MTC. Under section 18:7-1.9A, New Jersey established eight specific internet activities that exceed the protections of P.L. 86-272 and will result in the foreign corporation being subject to New Jersey corporation business tax.

As in other states attempting to limit P.L. 86-272 protections, the formal adoption of these regulations is not unopposed. On September 12 the ACMA filed a complaint against the New Jersey Division of Taxation, challenging the constitutionality of section 18:7-1.9A.[12] In the complaint, the ACMA raises similar constitutional issues to those it raised in its complaint against the New York State Department of Taxation and Finance.

Massachusetts

Finally, in March the Massachusetts Department of Revenue became the most recent state to issue a proposed regulation addressing the tax implications of internet activities under P.L. 86-272.[13] The proposed rule would adopt portions of the MTC's revised guidance. Unsurprisingly, however, the ACMA also submitted comments opposing the proposed regulation, noting that the DOR "is usurping a role explicitly reserved by the U.S. Constitution for Congress: namely, regulating interstate commerce."[14]

In October the DOR adopted revised regulations.[15] They provide examples of in-state business activities that would not be entirely ancillary to solicitation of orders of tangible personal property and therefore would not be protected by P.L. 86-272. The examples include placement of internet cookies onto computers of in-state customers that gather customer search information used to adjust production and inventory amounts, develop new products, or identify new items to offer for sale.

[3] *Id.* at 14.

[4] *Id.* at 18.

[5] Decision and order, *American Catalog Mailers Association*, 2025 N.Y. Misc. LEXIS 3642 at 1 (N.Y. Sup. Ct. Albany County Apr. 28, 2025).

[6] *Id.* at 27.

[7] *Id.* at 31.

[8] *Id.* at 30.

[9] *Id.* at 31.

[10] Notice of appeal, *American Catalog Mailers Association*, No. 903320-24 (N.Y. Sup. Ct. Albany County May 13, 2025).

[11] N.J. Admin. Code section 18:7-1.9A.

[12] Complaint, *American Catalog Mailers Association v. Director, Division of Taxation*, No. 010021-2025 (N.J. Tax Ct. Sept. 12, 2025).

[13] 830 CMR 63:39.1 (proposed Mar. 28, 2025).

[14] Comments from the ACMA to the Massachusetts DOR (Apr. 29, 2025).

[15] 830 CMR 63:39.1 (adopted Oct. 10, 2025).

Federal Efforts

Over the past 60 years, Congress has introduced but failed to pass legislation to alter P.L. 86-272. In 2025 a provision in the budget reconciliation bill that passed the U.S. House of Representatives would have defined "solicitation of orders" as any business activity that facilitates the solicitation of orders even if the activity could "also serve some independently valuable business function apart from solicitation."[16] Although the language did not make it into the final budget bill, it highlights the continued efforts to reform and clarify the federal law.

As more states continue to adopt new P.L. 86-272 regulations in response to the MTC's revised guidance, it is increasingly important for businesses to monitor and evaluate their internet activities in each state and the impact that such activities could have on a state's attempt to argue that those activities exceed P.L. 86-272 protection.

Catholic Charities Exemption

In a 2025 SALT case addressed by the U.S. Supreme Court, the Court unanimously held that Wisconsin discriminated against Catholic Charities when the state denied it an unemployment tax exemption.[17] Wisconsin argued that Catholic Charities was not operated primarily for religious purposes and was not a religious organization, and thus it was not entitled to the exemption. However, Wisconsin granted exemptions to other religious entities that provided charitable services similar to those provided by Catholic Charities. Wisconsin attempted to differentiate the two by arguing that those services were provided directly by the church, rather than through a separate church-controlled nonprofit like Catholic Charities.

Although the state argued that religion played no role in the decision, the justices held that denying the exemption violated the First Amendment because Wisconsin did not treat Catholic Charities with religious neutrality. The Court went on to explain:

> There may be hard calls to make in policing that rule, but this is not one. When the government distinguishes among religions based on theological differences in their provision of services, it imposes a denominational preference that must satisfy the highest level of judicial scrutiny. Because Wisconsin has transgressed that principle without the tailoring necessary to survive such scrutiny, the judgment of the Wisconsin Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.[18]

The decision could have implications for states with similar provisions, and nonprofit charitable organizations associated with a religion should take particular notice.

Sourcing Disputes

On June 26, without comment, the Massachusetts Supreme Judicial Court denied taxpayers' application for review of *Welch*, an appeals court decision that found they were correctly assessed tax on the 2015 gain from the sale of stock in a company that Mr. Welch cofounded in 2003.[19] Mr. Welch received more than $2 million as an employee of that company over the next decade, when Mr. and Mrs. Welch were Massachusetts residents. They later moved to New Hampshire, which has no personal income tax, and sold the stock. The Massachusetts DOR then assessed tax on the gain from the sale of the stock, sourcing the gain to Massachusetts.

In upholding the assessment, the Massachusetts Appeals Court held that although the taxpayers were not Massachusetts residents at the time of the sale, the gain was "derived from or effectively connected with" the taxpayers' business activities in the state.[20] The court's decision denying the taxpayers' application for review comes on the heels of *VAS Holdings*, in which the Massachusetts Supreme Court held that Massachusetts was not permitted to tax a

[16] Amy Hamilton, "Senate Strips P.L. 86-272 Language From One Big Beautiful Bill Act," *Tax Notes State*, July 7, 2025, p. 33.

[17] *Catholic Charities Inc. v. Wisconsin Labor & Industry Review Commission*, 605 U.S. 238 (2025).

[18] *Id.* at 254.

[19] *Welch v. Commissioner of Revenue*, No. FAR-3029 (Mass. June 26, 2025).

[20] *Welch v. Commissioner of Revenue*, 105 Mass. App. Ct. 391 (2025).

nonresident's gain from the sale of a nonunitary partnership interest.[21]

Individuals who participate or participated in the business or management of a Massachusetts business (and practitioners who advise them) should take particular notice of the *Welch* decision. While the decision is tied to the unique facts in *Welch*, those individuals who relocate from Massachusetts but retain equity in a company should be mindful of the court's decision and its potential implications for sourcing.

'Jock Tax'

The Pennsylvania Supreme Court has addressed the commonwealth's uniformity clause numerous times in recent years. This year it did so again. On September 25 the Pennsylvania Supreme Court held that Pittsburgh's "jock tax" violated the uniformity clause by unconstitutionally discriminating against nonresidents.[22] Pittsburgh enacted the nonresident sports facility usage fee under the Local Tax Enabling Act, which imposed a 3 percent usage fee on nonresident individuals who used sports facilities for athletic events or performances. The fee was imposed on the income earned at the stadiums. Pittsburgh residents were subject to a 1 percent earned income tax and a 2 percent school district tax.

A group of professional baseball, football, and hockey athletes and their unions alleged that the tax was unconstitutional because it unlawfully discriminated between resident and nonresident athletes and performers in violation of Pennsylvania's uniformity clause. The Pennsylvania Supreme Court agreed, holding that Pittsburgh's tax on nonresident athletes was an unconstitutional violation of the uniformity clause because it created an unfair burden — without a valid justification — on nonresident athletes compared with resident athletes.

The decision is the latest in a string of cases in which the Pennsylvania Supreme Court has analyzed the uniformity clause and continued to reinforce its applicability to various taxes and scenarios throughout the commonwealth.

Conclusion

The cases and developments examined in this article highlight the ever-changing SALT landscape. In 2025 states continued to push the boundaries of P.L. 86-272 in light of modern business activities, prompting significant litigation and constitutional challenges. The U.S. Supreme Court reinforced religious neutrality in tax exemptions, while sourcing disputes show that there continue to be issues of residency and business connections in determining tax obligations. Finally, the invalidation of Pittsburgh's jock tax underscores Pennsylvania's ongoing scrutiny of uniformity clause violations. Collectively, these developments signal an era of heightened compliance challenges and demonstrate why businesses and practitioners must remain vigilant and stay abreast of changes in 2026. ■

[21] *VAS Holdings & Investments LLC v. Commissioner of Revenue*, 186 N.E.3d 1240 (Mass. 2022).

[22] *National Hockey League Players Association v. City of Pittsburgh*, Docket No. 20 WAP 2024 (Pa. Sept. 25, 2025).