Written Public Comments Submitted to the Department of Finance

Rules Relating to the Implementation of the Business Corporation Tax.

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1. **Andrew Wilford – National Taxpayers Union Foundation – 11/19/2025 - NYC Rules Webpage**

On behalf of National Taxpayers Union Foundation ("NTUF"), we write with comments on the Department of Finance's notice and request for public comment on proposed changes to corporate income tax nexus and interaction with federal Public Law 86-272, also known as the Interstate Income Act of 1959.

Introduction

For nearly five decades, NTUF has striven to give policymakers the tools to make informed, pro-taxpayer policy choices. Our Interstate Commerce Initiative has sought to draw attention to the growing problem of states and localities taxing and regulating taxpayers outside their borders, often with little regard to the impact on the broader national economy.

The proposed rules would double down on the state government's misguided attempt to handwave away existing federal law, placing the City of New York in the same legal jeopardy that the State currently finds itself in, as well as creating undue compliance burdens for the small remote retailers that rely on the protection of P.L. 86-272 to be able to access a nationwide market and compete with larger retailers without needing to retain armies of accountants and tax experts.

P.L. 86-272 Is Still In Effect, and the Proposed Rules Violate it

P.L. 86-272 prohibits states (and their sub-jurisdictions) from imposing business income tax obligations on out-of-state sellers solely on the basis of:

> "the solicitation of orders by such person, or his representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State."

The proposed rules critically undermine these protections by baselessly designating basic functions of a modern retail website as outside the scope of P.L. 86-272's protections. Activities listed as unprotected under the proposed rule include offering virtual chat-based customer service (Example 7), accepting submission of job applications through the

website (Example 9), and the use of digital "cookies" for any functions defined by the Department as not being entirely ancillary to solicitation of orders (Example 10).

In all these cases, remote businesses are being told that by virtue of offering New York City consumers convenience, they will face new tax burdens. Were a New York City resident to travel to an out-of-state business's retail location to ask a customer service question, or to turn in a job application, that business would not have New York City income tax liability. It makes little sense to punish businesses for allowing New York City residents a more convenient, digital alternative.

More than just violating the spirit of P.L. 86-272, the proposed regulations put the city in legal jeopardy as well. Defining basic business activities as outside the scope of P.L. 86-272 renders the circumstances in which businesses can sell to New York City customers and still enjoy the law's protections so narrow as to be nearly impossible to satisfy. Any interpretation of federal law by a state or its sub-jurisdictions that effectively voids that law deserves scrutiny by the courts.

Indeed, the state is currently embroiled in legal challenges over its similar reinterpretation of P.L. 86-272,[1] and New York City risks similar litigation if it should move ahead with these changes. Federal legislation has also been introduced in both chambers of Congress that would reinforce P.L. 86-272's language, casting further doubt on the claim that P.L. 86-272 is an archaic provision with no relevance in today's modern economy.

Multistate Income Tax Compliance is Hard Enough for Small Businesses Without Multi-City Compliance

Legal questions aside, subjecting more small businesses to tax compliance obligations is bad policy. The largest businesses based out-of-state have income tax compliance obligations in New York City already, and have the in-house accounting capacity to manage those obligations.

For small businesses that are lucky to have a single individual dedicated to tax compliance, complying with different income tax regimes in multiple states is hard enough — adding in compliance in local jurisdictions only exacerbates the problem. These compliance burdens can be even more significant than the actual tax being remitted, as compliance entails significant costs in the form of compliance software licenses, employee hours dedicated to accounting, and audit risk. They fall disproprotionately heavily on smaller businesses.

Conclusion

New York City should not compound the mistakes of the state government by adopting the same punitive regulatory interpretation of P.L. 86-272. The law remains an important protection that allows small businesses to operate competitively in an increasingly digitized economy — undermining these protections will lead to an economy where only businesses with massive state and local tax accounting operations can operate.

Thank you for your consideration. I am happy to answer any additional questions at [EMAIL REMOVED].

[1] https://www.taxnotes.com/tax-notes-today-state/jurisdiction-tax/acma-appeals-new-york-trial-courts-p.l-86- 272-decision/2025/07/11/7srf

2. Managed Funds Association (MFA) – 11/20/2025 – NYC Rules Webpage

MFA[1] appreciates the opportunity to provide feedback to the New York City Department of Finance (the "Department") as it develops regulations for the business corporation tax ("BCT"),[2] including, in particular, "definitions of relevant terms that are used throughout the regulations" and rules relating to "the required minimum activities in the City for corporations to be subject to tax under the BCT" (the "proposed nexus rules").[3] We commend the Department for its iterative approach to rulemaking through which the Department intends to publish additional proposed rules in tranches and may promulgate new proposed rules and notices of public hearing seeking further comment at a later time, if necessary.

MFA represents the global alternative asset management industry, of which over 1,800 New York City-based fund managers, in total, manage trillions of dollars in gross assets for institutional investors. Institutional investors—like pension plans, university endowments, and charitable foundations—rely on MFA members to diversify their investments, manage risk, and generate attractive returns throughout the economic cycle. While the proposed BCT regulations address various definitions and provide a broad range of proposed nexus rules, we limit our comments to the definitions and proposed nexus rules relevant to common structures and activities in the alternative asset management industry. Specifically, we believe that the definition of "portfolio investment partnership" and certain proposed nexus rules should more closely conform to their New York State analogues.

I. Executive Summary As set forth in more detail below, we make the following two recommendations:

1. The definition of "portfolio investment partnership" should more closely conform to its New York State analogue.

2. The proposed nexus rules should adopt New York State's quantitative thresholds for a corporate limited partner's interest or basis in its interest in a limited partnership.

II. Discussion

1. The definition of "portfolio investment partnership" should more closely conform to its New York State analogue.

Proposed Regulation section 11A-04(d) provides that "[a] corporation whose only contact with New York City is the ownership of a limited partnership interest in a portfolio investment partnership will not be deemed to be doing business in New York City," unless certain conditions are met. New York State provides a rule to similar effect.[4] However, the definitions of "portfolio investment partnership" for City and State purposes diverge along the lines of which asset classes a "portfolio investment partnership" may invest. The City definition limits a "portfolio investment partnership" to "a limited partnership that meets the gross income requirement of IRC section 851(b)(2)"—namely, a 90 percent threshold of gross income derived from "stock or securities," "foreign currencies," or "other income (including…gains from options, futures or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies."[5] By contrast, the State definition more expansively provides that "income and gains from commodities…or from futures, forwards, and options with respect to such commodities are included in income that qualifies to meet such gross income requirement."[6] Both definitions otherwise exclude dealers in stocks or securities (and commodities, in the case of the State definition).

While we appreciate that the former regulatory definition of "portfolio investment partnership" for general corporation tax ("GCT") purposes similarly was not as expansive as the State definition,[7] we urge the Department to take this opportunity to more closely conform the City definition to its State analogue.[8] First, there is no statutory basis to narrowly circumscribe the asset classes in which a "portfolio investment partnership" may invest.[9] To the contrary, the Department is given broad regulatory authority to determine the manner in which "any corporation that is a partner in such partnership [doing business in the City] shall be subject to tax."[10]

Second, the State's more expansive definition is better suited to the purpose which the proposed nexus rule related to "portfolio limited partnerships" serves—principally, to relieve corporations whose only contact with the jurisdiction is a non-controlling limited partner interest from the time and expense of filing and (often, negligible) tax-paying obligations. To that end, in the past year, our members and their clients issued and

received hundreds of thousands of Schedules K-1 from different partnerships, most of which include corporate limited partners as direct and indirect partners. The less expansive City definition threatens the possibility that these corporate limited partners may have BCT filing and tax-paying obligations for which the compliance burden for both putative taxpayers and the Department alike would far surpass the value of the tax collected.

Third, there is no policy basis to discriminate on the basis of asset classes in which a "portfolio investment partnership" may invest. As discussed above, the purpose of the proposed nexus rule related to "portfolio limited partnerships" is to relieve corporations whose only contact with the jurisdiction is a noncontrolling limited partner interest from the time and expense of filing and tax-paying obligations. This proposed nexus rule for corporate limited partners of investment vehicles organized as limited partnerships that conduct investment activities in the City is intended to incentivize that activity without jeopardizing the tax position of the corporate limited partners. Therefore, the City definition should be no less expansive than the State definition, to encourage a broad range of investment activity in the City. In fact, the Department should consider futureproofing the City definition by incorporating protections for other common asset classes, including, for example, lending and ancillary activities and trading in digital assets (as defined in I.R.C. section 6045(g)(3)(D)).

Moreover, there is even less of an apparent policy basis to exclude commodities trading activities where the unincorporated business tax ("UBT") exempts non-dealer individuals and unincorporated entities from being considered engaged in an unincorporated business solely by reason of the purchase and sale of property, including stocks, securities, and commodities, for their own account.[11] Taken together with the proposed nexus rule related to "portfolio limited partnerships," investment vehicles organized as limited partnerships or other state law entities characterized as partnerships for tax purposes and their limited partner-investors are generally exempt from City taxation, unless, in the case of a corporate limited partner, the investor is otherwise independently subject to the BCT. Both rules serve the same purpose— incentivizing a broad range of investment activity in the City—and should be equally expansive.

2. The proposed nexus rules should adopt New York State's quantitative thresholds for a corporate limited partner's interest or basis in its interest in a limited partnership

Proposed Regulation section 11A-04(b) provides that "a corporation shall be deemed to be doing business in New York City if such corporation owns a limited partnership interest in a partnership that is doing business…in New York City." The City regulation effectively attributes the nexus-triggering activities of a limited partnership to its corporate limited partners, with limited exceptions for corporate limited partners of publicly traded

partnerships and "portfolio investment partnerships." By contrast, New York State provides an additional nexus safe harbor for a corporate limited partner with a less-than-1-percent interest as a limited partner in a partnership or $1 million-or-less basis in its interest in the limited partnership, which is not otherwise described by a non-exhaustive list of nexus-triggering factual situations in the State regulation.[12]

While we appreciate that "[n]exus rules for limited partners subject to the GCT have historically diverged from the State," we urge the Department to adopt the State's nexus safe harbor for corporate limited partners whose only contact with the City is the ownership of a de minimis limited partnership interest. The State's nexus safe harbor fulfills a similar purpose as the proposed nexus rule related to "portfolio limited partnerships"—to relieve corporations whose only contact with the jurisdiction is a noncontrolling limited partner interest from the time and expense of filing and negligible tax-paying obligations where the compliance burden for both putative taxpayers and the Department alike would far surpass the value of the tax collected.

Moreover, the State's nexus safe harbor "fills in the gap" where the proposed nexus rule related to "portfolio limited partnerships" is ineffective, for example, because the limited partnership invests in portfolio-diversifying asset classes which cause it to fail the gross income requirement of I.R.C. section 851(b)(2). The State's nexus safe harbor's quantitative thresholds serve as a natural backstop to corporate limited partners with effective control of the limited partnership or its general partner(s) inappropriately availing themselves of the nexus safe harbor. In any case, the City may incorporate the same conditions under which a corporate limited partner may not qualify for the limited exceptions for corporate limited partners of publicly traded partnerships and "portfolio investment partnerships," to further ensure that only truly non-controlling limited partner interests qualify.

We appreciate the opportunity to submit our comments on the Department's proposed BCT regulations, and we would be pleased to meet with the Department to discuss our comments. If the Department has any questions or comments, please do not hesitate to call Joseph Schwartz, Vice President and Senior Counsel, or the undersigned at [PHONE NUMBER REMOVED].

Respectfully submitted, /s/ Jennifer W. Han Jennifer W. Han Chief Legal Officer & Head of Global Regulatory Affairs Managed Funds Association

[1] Managed Funds Association (MFA), based in Washington, D.C., New York City, Brussels, and London, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest it, and

generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 fund manager members, including traditional hedge funds, private credit funds, and hybrid funds, that employ a diverse set of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors diversify their investments, manage risk, and generate attractive returns throughout the economic cycle.

[2] Unless otherwise indicated, all "Section" and "Regulation" references are to the New York City Administrative Code, Title 11 (Taxation and Finance), as amended, and the Rules of the City of New York (RCNY) promulgated thereunder.

[3] N.Y.C. DEP'T OF FIN., NOTICE OF PUBLIC HEARING AND OPPORTUNITY TO COMMENT ON PROPOSED RULES (2025), https://www.nyc.gov/assets/finance/downloads/pdf/rules/dof-proposed-rules-bct-implementation.pdf.

[4] N.Y COMP. CODES R. & REGS. tit. 20, § 1-2.3(b), (d).

[5] I.R.C. § 851(b)(2).

[6] N.Y COMP. CODES R. & REGS. tit. 20, § 1-2.3(e)(4).

[7] See RCNY § 11-06(d).

[8] The New York State Bar Association (NYSBA) Tax Section championed greater conformity as early as January 1998. See NYSBA Tax Section, Tax Report #917 (Jan. 20, 1998) ("...we note that each of the various State and City provisions relating to portfolio investment partnerships...define permissible activities inconsistently with each other and with the federal rule that applies to offshore investment vehicles...[I]t would be desirable if the applicable State and City provisions were revised to achieve greater conformity.").

[9] See N.Y.C. ADMIN. CODE § 11-651 et seq.

[10] N.Y.C. ADMIN. CODE § 11-653(1)(f).

[11] See N.Y.C. ADMIN. CODE § 11-502(c); RCNY § 28-02(g).

[12] See N.Y COMP. CODES R. & REGS. tit. 20, § 1-2.3(b)(2)(i)

3. **David Swetnam-Burland - BRANN & ISAACSON - American Commerce Marketing Association – 11/20/2025 – Email**

Re: Comments of the American Commerce Marketing Association on Proposed Rules relating to the Business Corporation Tax

We represent the American Commerce Marketing Association (f/k/a American Catalog Mailers Association) (ACMA), a non-profit trade association advocating for catalog, online, direct mail, and other remote-selling merchants and their suppliers. On behalf of the ACMA and its members—businesses of all sizes directly and immediately concerned with the costs and burdens of understanding and complying with the tax laws of the 50 states and District of Columbia, not to mention the thousands of local jurisdictions within those states, such as the City of New York—we appreciate the opportunity to comment on the proposed amendments to the Department of Finance's (Department's) regulations relating to the Business Corporation Tax.

Specifically, the ACMA writes to object to proposed Section 11A-11, "Public Law 86–272," to the extent it addresses "activities engaged in via the Internet." Proposed § 11A-11(d). This proposed provision—essentially an adoption of the Multistate Tax Commission's 2021 Statement of Information Concerning Practices of the Multistate Tax Commission and Supporting States Under Public Law 86-272—is unsound and unlawful. Under a controlling federal statute enacted by Congress using its affirmative Commerce Clause authority, a locality may not subject a business to a tax on its net income unless the business engages in non-solicitation business activities within that jurisdiction—in this case, New York City. With respect to the interpretation of P.L. 86-272, a retail website is no different from a catalog or a toll-free telephone number. Unless and until a business has its own employees, agents, inventory, or equipment in a jurisdiction, it is not engaged in business activities within that jurisdiction just because it receives U.S. mail, long-distance telephone calls, or online communications from that jurisdiction.

P.L. 86-272 provides in relevant part:

No State, or political subdivision thereof, shall have power to impose...a net income tax on the income derived within such State by any person from interstate commerce if the only business activities within such State by or on behalf of such person during such taxable year are either, or both, of the following:

> (1) the solicitation of orders by such person, or his representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State; and

(2) the solicitation of orders by such person, or his representative, in such State in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitation are orders described in paragraph.

15 U.S.C. § 381(a) (emphasis added).

Congress passed this statute shortly after the U.S. Supreme Court's decision in Northwestern States Portland Cement Co. v. Minnesota and Williams v. Stockham Valves & Fittings, Inc., 358 U.S. 450 (1959). In that case, the Supreme Court sustained a Minnesota income tax on the Minnesota-apportioned net income of an Iowa manufacturer that engaged in the regular and systematic solicitation of orders for the sale of its products and leased a sales office in Minneapolis equipped with its own furniture and fixtures and staffed by four employees. In passing legislation limiting state power to tax the net income of businesses engaged in interstate commerce, Congress reversed the outcome of the Northwestern States decision, and took up the invitation of Justice Frankfurter, who had written in dissent:

> The question is not whether a fair share of the profits derived from the carrying on of exclusively interstate commerce should contribute to the cost of the state governments. The question is whether the answer to this problem rests with this Court or with Congress.... The problem calls for solution by devising a congressional policy. Congress alone can provide for a full and thorough canvassing of the multitudinous and intricate factors which compose the problem of the taxing freedom of the States and the needed limits on such state taxing power."

Id. at 475-76 (Frankfurter, J., dissenting; emphasis added).

Since its enactment in 1959, Congress has not changed the policy it established in P.L. 86-272 governing the competing interests of states to tax, nor the mandate that a jurisdiction may not tax the net income of companies operating in interstate commerce that do not engage in business activities within the boundaries of that jurisdiction. In crafting this policy, Congress drew a careful balance between the interests of the various levels of government in our federal system. Where Congress has acted to regulate interstate commerce, state or local law will be preempted if it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Ray v. Atlantic Richfield Co., 435 U.S. 151, 156 (1978). Congress's purpose in enacting P.L. 86–272 was clear: "to define clearly a lower limit for the exercise of" a state or locality's power to tax. Heublein, Inc. v. South Carolina Tax Comm'n, 409 U.S. 275, 281 (1972).

U.S. Supreme Court and state court decisions have reinforced the statute's fundamental thrust: an out-of-state business engaged in interstate commerce is exempt from state or local tax on its net income unless its own activities within the taxing jurisdiction exceed the solicitation of sales of tangible personal property. See Heublein, 409 U.S. at 281; Wisconsin Dep't of Rev. v. William Wrigley, Jr., Co., 505 U.S. 214, 233 (1992); Consolidated Accessories Corp. v. Franchise Tax Board 161 Cal.App.3d 1036, 1042 (Cal. App. 1984); Brown Group Retail, Inc. v. Franchise Tax Board 44 Cal.App.4th 823, 827-28 (Cal. App. 1996); Herff Jones Co. v. State Tax Comm'n, 430 P.2d 998, 1001–02 (Ore. 1967). New York courts agree. See Gillette Co. v. State Tax Comm'n, 56 A.D.2d 475, 477, N.Y.2d 846 (1978) (in-state activities conducted by salesmen, including consulting retailers on the display of products for sale, are protected solicitation activities).

The language of P.L. 86-272 should be interpreted as it was understood at the time of its enactment in 1959. See Wisconsin Central Ltd. v. United States, 138 S. Ct. 2067, 2070 (2018). Neither judges, states, nor localities have the authority to alter that meaning. See Bostock v. Clayton Cty., 140 S. Ct. 1731, 1738 (2020). Unless and until Congress acts to change P.L. 86-272, the provisions of this federal statute must be understood, as it was in 1959, to include the actual presence of agents of the business or equipment in use by the business within the taxing jurisdiction. The MTC's revised statement, which the Department has essentially adopted, directly conflicts with this requirement of federal law.

We note further that the ACMA has challenged the validity of an analogous Internet Activities Rule promulgated by the New York Department of Taxation and Finance in ACMA v. Department of Taxation and Finance, Case No. CV-25-0865 (App. Div. 3d Dep't). Oral argument is scheduled in the Appellate Division in February 2026. The ACMA asks the Department at a minimum to await the final resolution of that litigation before issuing the proposed regulation. The ACMA further notes that one issue has been definitively resolved by that case. A rule along the lines proposed by the Department may not be applied retroactively. While the Department has not, to the ACMA's knowledge, asserted that it plans to apply section 11A-11 retroactively, to do so would be contrary to law.

In sum, the Department's proposed section 11A-11 is unlawful because it directly contradicts a controlling federal statute, by treating business activities via the internet as unprotected without regard to where a business engages in them. The Department may believe P.L. 86-272 is outdated in the Internet age—though, as noted above, there is little practical distinction between a customer interacting with an out-of-state retailer via the Internet and interacting with that same retailer via catalogs, the U.S. Mail, or long-distance telephone lines, all technologies well established at the time of P.L. 86-272's passage. Under the U.S. Constitution, however, only Congress can determine that a federal law

should be changed in response to changed circumstances or the passage of time. The ACMA urges the Department to follow federal law and withdraw this proposed amendment.

Very truly yours,

BRANN & ISAACSON [PHONE NUMBER AND MAILING ADDRESS REMOVED]

David Swetnam-Burland [EMAIL REMOVED]

Nathaniel A. Bessey [EMAIL REMOVED]