

Income/Franchise:

New Jersey Tax Court Says P.L. 86-272 Protections Don't Apply to Out-of-State Service Provider

Docket No. 012545-2021, N.J. Tax Ct. (12/18/23). In an unpublished opinion involving an out-of-state federally licensed national freight forwarder that coordinates “less-than-truckload” shipments of temperature-controlled items throughout the United States and whether it was subject to New Jersey’s corporation business tax (CBT) for the tax years at issue, the New Jersey Tax Court (Court):

URL: <https://www.njcourts.gov/system/files/court-opinions/2023/012545-2021.pdf>

- Denied the freight forwarder’s motion for summary judgment that P.L. 86-272 conferred it with immunity from CBT taxation,
- Denied the New Jersey Division of Taxation’s motion for summary judgment that the freight forwarder owed the underlying assessed CBT amounts,
- Held that genuine issues of material fact remain unresolved as to whether the freight forwarder’s activities satisfy New Jersey’s “doing business” factors and criteria, and
- Held that the Court does not yet “possess a clear picture of the scope, nature, and extent of plaintiff’s and plaintiff’s employees in-state business activities.”

In denying the company’s motion for summary judgment, the Court explained that the freight forwarder is a service provider that does not solicit orders for the sale of tangible personal property as such phrase is construed under and mandated by P.L. 86-272, because it merely renders a service for its shipping customers by coordinating and combining multiple less-than-truckload shipments of freight and does not have an ownership interest in the actual freight being shipped. Please contact us with any questions.

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