

Income/Franchise:

New York: Trade Association Challenges Validity of New Article 9-A Rule on P.L. 86-272 and Internet Activity

Case No. 903320-24, N.Y. Sup. Ct., Albany County (complaint filed 4/5/24). An industry trade association representing remote sellers has filed a suit seeking declaratory judgment that the New York State Department of Taxation and Finance's (Department) recently adopted Article 9-A Business Corporation Franchise Tax Regulation (specifically, 20 NYCRR section 1-2.10 ("Rule")) [see *Repeal of preexisting 20 NYCRR Subchapter A, Parts 1 through 9, the Business Corporation Franchise Tax, and Adoption of New 20 NYCRR Subchapter A, Parts 1 through 9; Repeal of preexisting 20 NYCRR Subchapter B, the Franchise Tax on Banking Corporations Regulations; and Adopted Amendments to 20 NYCRR Subchapter C, the Franchise Taxes on Insurance Corporations*, N.Y. Dept. of Tax. & Fin. (12/11/23); Notice of Adoption, N.Y. Dept. of Tax. & Fin. (12/27/23); and previously issued Multistate Tax Alert for more details on the newly adopted Article 9-A Business Corporation Franchise Tax Regulations] purported to interpret and apply P.L. 86-272 is invalid because it effectively erases "longstanding federal protections against overreach by state tax agencies." The trade association's filed complaint argues that only Congress, not the Department, has the power to amend or repeal P.L. 86-272, and that the Department's new Rule regarding P.L. 86-272 as applied to "activities engaged in via the Internet" directly conflicts with the controlling federal statute, and so is invalid. Please contact us with any questions.

URL: <https://www.tax.ny.gov/rulemaker/adoptions/corp/2023.htm#om121123>

URL: <https://dos.ny.gov/system/files/documents/2023/12/122723.pdf>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-new-york-adopts-final-corporate-income-tax-regulations.pdf>

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