



MULTISTATE TAX COMMISSION

# UNIFORMITY DEVELOPMENTS

Report to the MTC Uniformity Committee

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**P.L. 86-272 -**



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LITIGATION**

- In New York state and New Jersey *American Catalog Mailers* cases are still pending over rules similar to the MTC revised statement on P.L. 86-272
- New York City and Massachusetts have also said they will adopt similar rules.



# **DEFINITION OF “SALES” OR “RECEIPTS” –**



## CAN SOME RECEIPTS BE EXCLUDED

- This has come up in the litigation between Florida and California
- Florida argued that the MTC model regulations once excluded certain receipts not in the regular course of business or from certain other non-market related activity, but that we eliminated that exclusion when we adopted market-based sourcing
- But the concepts in the regulations were incorporated into our revised model UDITPA (Art. IV of the Compact)—definition of receipts (by conforming receipts to the transactional test)
  - (g) “Receipts” means all gross receipts of the taxpayer that are not allocated under paragraphs of this article, and that are received from transactions and activity **in the regular course of the taxpayer’s trade or business; except that receipts of a taxpayer from hedging transactions and from the maturity, redemption, sale, exchange, loan or other disposition of cash or securities, shall be excluded.**



# **SOURCING RECEIPTS (SALES) –**



## **SOURCING SALES OF TANGIBLES**

- When do you “look-through” when sourcing tangibles?
- Examples that have come up in recent litigation or controversies include:
  - Sales where the purchaser’s use is entirely outside the state
  - Sales where an intermediary takes temporary possession on behalf of the seller or purchaser and then delivers the items outside the state
  - Sales delivered to a storage facility in which the purchaser has some agreement to allow the items to be stored and then shipped to their ultimate destination at the direction of the purchaser



# **APPORTIONMENT FORMULA –**



## SINGLE SALES FACTOR

- Lots of discussion still going on about whether states can use single sales factor to source multistate income – See the *Smithfield* case out of California
- Arguments are generally not based on whether SSF is uniform (since most states currently use it)—but on some other theory that there is only one constitutional apportionment formula
- These arguments contradict U.S. Supreme Court precedent – especially the leading case – *Container*

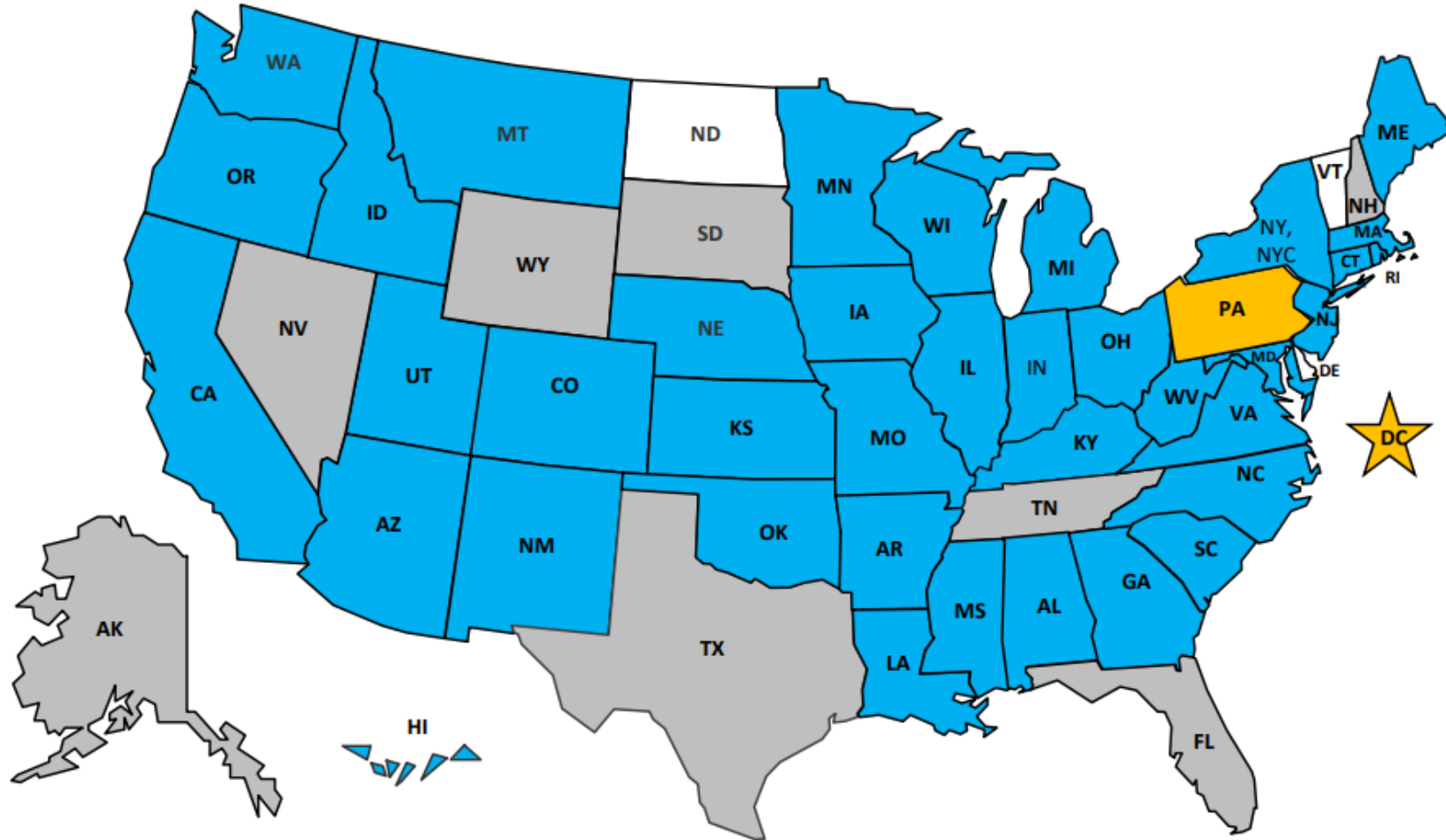


# **PARTNERSHIP RAR MODEL -**



# States with Enacted or Proposed Pass-Through Entity (PTE) Level Tax

As of April 14, 2026



- 38 states (& 1 locality) that enacted a PTE tax since TCJA SALT deduction limitation, effective for 2024 (or earlier) unless noted: [AL](#), [AR](#), [AZ](#), [CA](#)<sup>3</sup>, [CO](#)<sup>2</sup>, [CT](#)<sup>1</sup>, [HI](#), [GA](#), [IA](#)<sup>2</sup>, [ID](#), [IL](#)<sup>4</sup>, [IN](#), [KS](#), [KY](#), [LA](#), [MA](#)<sup>2</sup>, [ME](#)<sup>4</sup>, [MI](#)<sup>2</sup>, [MD](#), [MN](#), [MO](#), [MS](#), [MT](#), [NC](#), [NE](#), [NJ](#), [NM](#), [NY](#), [OH](#), [OK](#), [OR](#)<sup>6</sup>, [RI](#), [SC](#), [UT](#)<sup>4</sup>, [VA](#)<sup>4</sup>, [WA](#)<sup>5</sup>, [WI](#), [WV](#), and [NYC](#)
- 1 state and 1 locality with active proposed PTE tax bills for 2026 (PA - [SB 396](#), [HB 1610](#), and DC - [B26-0324](#))
- 8 states with no owner-level personal income tax on PTE income: AK, FL, NH, NV, SD, TN, TX, and WY
- 3 states with an owner-level personal income tax on PTE income that have not yet enacted and/or do not have an active proposed bill on PTE taxes: DE, ND, and VT

<sup>1</sup> Mandatory 2018-2023, elective starting 2024

<sup>2</sup> State PTET expires when the federal cap expires or is otherwise not in effect (CO, IA, MA, MI)

<sup>3</sup> State PTET expires Dec. 31, 2030 (CA)

<sup>4</sup> State PTET permanently extended (IL, ME, UT and VA)

<sup>5</sup> State with no owner-level personal income tax but with enacted PTET legislation effective in 2028 (WA)

<sup>6</sup> State PTET expires Dec. 31, 2027 (OR)



# **PARTNERSHIP AUDITS –**



## **NOT HAPPENING**

- From the TIGTA Report - March 18, 2026
- IRS provided data show that the number of returns filed by partnerships with at least \$10 million in total assets increased from 140,577 returns for Tax Year (TY) 2011 to 334,686 returns for TY 2023.
- However, the IRS also stated that the examination rate for these partnerships decreased from 2.7 percent to less than 0.1 percent during the same period.