

1000 RELEVANT LAW

Subsequent sections of this manual cover the aspects of the apportionment and allocation procedures applicable to multistate businesses. To place those rules into the proper perspective, this section provides an overall understanding of the framework of the California Bank and Corporation tax system as it relates to multistate businesses. This section of the manual begins with a discussion of nexus, followed by coverage of the additional jurisdictional limitations imposed by Public Law 86-272 (73 Stat. 555; 15 USC §381, approved September 14, 1968).

1100 Nexus and a State's Right to Tax

When determining whether a state has a right to tax a business entity, the following steps should be taken:

- Determine whether an entity is doing business within the state or deriving income from sources within the state, such that statutory nexus has been established.
- If statutory nexus has been established, determine whether the tests imposed by the Due Process Clause and the Commerce Clause of the U.S. Constitution have been satisfied, such that constitutional nexus has been established.
- If statutory and constitutional nexus have been established, determine whether Public Law 86-272 (15 USC §381) prevents the state from asserting its right to impose a tax based on net income. If this section does apply, then the state may not impose the franchise or corporate tax, however, the minimum franchise tax may still apply. See MATM 1200 for further information.

Upon determining that statutory nexus and constitutional nexus have been satisfied and that Public Law 86-272 does not apply, then it may be concluded that the state does have the right to impose the corporate or franchise tax.

Doing Business or Deriving Income from Sources within the State

Doing Business:

A business entity is considered doing business within this State for taxable years beginning before January 1, 2011, if it is actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. (R&TC §23101)

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Camilla Rothe

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