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Domestic Asset Protection Trusts

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We live in an era of unprecedented litigiousness where doctors, lawyers, accountants and business owners frequently become defendants in lawsuits seeking damages in the tens of millions of dollars. Clients concerned about these potentially devastating liabilities are increasingly inquiring about the efficacy of establishing an asset protection trust ("APT") as a part of a comprehensive estate plan to provide a measure of protection for their family's core savings.

An APT is an irrevocable, self-settled spendthrift trust that protects a portion of an individual's assets from creditors. Since the late 1970's, APT's have been formed by U.S. citizens in offshore jurisdictions including Bermuda, the Isle of Man, the Cook Islands, and various Caribbean nations. Until recently, no U.S. jurisdiction extended spendthrift protection to trusts in which the grantor had retained an interest, at least to the extent of such retained interest. APT's have now been authorized in six U.S. jurisdictions: Delaware, Alaska, Nevada, Oklahoma, Rhode Island, and Utah. This article will focus on domestic APT's, rather than offshore APT's.

Some commentators question whether APT's are ethical since their raison d'être is to protect a portion of the donor's assets from creditors and, at the same time, allow the grantor to retain at least a limited interest in the trust. The honest answer is that APT's present a conundrum in which the law must balance two conflicting objectives: free alienation of property and protection of creditor's rights. This article will focus on the essential elements of a valid APT and the process which must be undertaken to strike a proper a balance between these two competing objectives.

I. Asset Protection Trusts Generally

Although domestic APT statutes vary in their details, they all share some common elements:

- Transfer property to an irrevocable trust
- Resident trustee from the state of trust formation
- Specific incorporation of state law
- Option to appoint trust protector
- Inclusion of a spendthrift clause
- Grantor's retained interests
- Tail periods for extinguishing claims

Transfer to Irrevocable Trust

The transfer of assets must be to an irrevocable spendthrift trust. It may be a direct transfer from the grantor to the trustee or may result from the grantor's exercise of an inter vivos power of appointment under an existing trust.

Resident Trustee or Qualified Trustee

The trustee is typically an independent individual, bank, or trust company resident in the state of trust formation. Some states (*e.g.*, Delaware) permit an out-of-state co-trustee. The grantor must not serve as the trustee, but may serve as an investment advisor and may reserve a veto power over distributions.

The trustee must maintain custody of some or all of the trust corpus, must maintain trust records, prepare fiduciary income tax returns, or materially participate in the administration of the trust.

Trust Protector

Many APT's have a trust protector, a fiduciary who may veto distributions and investments or remove and replace the trustee. The trust protector adds an additional layer of checks and balances in the management of the APT.

Incorporation of State Law

The trust instrument must expressly incorporate that state's law to govern the trust's validity, construction, and administration. For example, any claim involving a Delaware APT can only be brought in that state's court.

Spendthrift Clause

The trust instrument must include a spendthrift provision prohibiting the attachment or assignment of any beneficiary's interest in the trust.

Grantor's Retained Interests

The typical APT permits the grantor to retain the following defined interests:

- Discretionary distributions of income and/or principal
- Veto power over distributions
- Special testamentary power of appointment

However, the Delaware Act permits the following additional retained interests:

- Mandatory right to trust income
- Income or principal from a Charitable Remainder Trust
- Unitrust distribution (up to 5%)
- Receipt of principal at the trustee's sole discretion or pursuant to an ascertainable standard
- Right to remove the trustee or investment advisor
- Right to serve as an investment advisor
- Use of real property under a Qualified Personal Residence Trust
- Not limited to individuals—corporations and partnerships may create an APT

Tail Periods

There are certain "tail periods" that begin to run upon the grantor's transfer of assets to the APT. At the expiration of the tail period, the enforcement of nearly all future creditors' claims is barred. Claimants who bring suit within the relevant tail period must prove the existence of a "fraudulent transfer."

Most APT statutes provide that future creditors (those creditors whose claims arise after the trust was created) must bring their claim within 4 years from the date of transfer to the trust. Existing creditors (those creditors whose claims arose before the trust was created), other than the exempt creditors described below, must bring their claim within the later of 4 years from the date of transfer to the trust or 1 year after the creditor discovered (or should have discovered) the existence of the trust.

Fraudulent Transfer

A creditor who brings a claim within the relevant tail period must prove that the transfer to the APT was a "fraudulent transfer." Fraudulent transfer or fraudulent conveyance provisions exist under both the federal Bankruptcy Code and state law. Most states have adopted a version of the Uniform Fraudulent Transfers Act.

An existing creditor may establish a fraudulent transfer if the grantor made the transfer without receiving reasonably equivalent value in exchange for the transfer; and the grantor was insolvent at the time (or the grantor became insolvent as a result of the transfer).

A future creditor may establish a fraudulent transfer if the grantor made the transfer:

(1) With the actual intent to defraud any creditor; or

(2) Without receiving reasonably equivalent value in exchange for the transfer; and the grantor:

(a) was engaged in a transaction for which his remaining assets were unreasonably small in relation to the transaction; or

(b) intended to incur (or believed he would incur) debts beyond his ability to pay as they became due.

The first test is a subjective "badges of fraud" test. Relevant lines of inquiry include whether the grantor has been sued or threatened with suit, whether the grantor effectively retained control over the assets, whether the grantor transferred substantially all of the grantor's assets to the APT, and whether the transfer to the APT occurred shortly before or after the grantor incurred a substantial debt. The essence of this test is whether the grantor could *reasonably have anticipated* the future creditor's claim upon funding the APT.

The second test is a more objective test which calls for an examination of the sufficiency of the grantor's assets in light of the circumstances at the time of the transfer.

If a creditor successfully challenges a transfer to an APT as being fraudulent, the creditor can recover its debt, plus any costs and attorneys' fees allowed by the court. The existence of a fraudulent transfer as to one creditor will not inevitably invalidate the trust for all creditors. Each creditor must demonstrate as to its own particular circumstances that a transfer was fraudulent.

Exempt Creditors

For public policy reasons, two classes of creditors enjoy special status (except in Nevada and Utah) and are exempt from the provisions of APT statutes: (1) spouses and children and (2) existing tort claimants. These creditors may reach trust assets without regard to any tail period and without having to prove the existence of a fraudulent transfer.

Trust assets will not be protected against child support claims or claims for alimony or marital property asserted by one who was married to the grantor at or before the time of the *transfer to the trust*. Since one does not acquire the status of "spouse" under this exemption if the grantor's transfer pre-dates the marriage, an APT is a discreet alternative to a pre-nuptial agreement.

APT statutes do not insulate trust property from tort claimants (death, personal injury, or property damage) *on or before* the date of the transfer to the trust where the injury is caused (in whole or in part) by an act or omission of the grantor or by someone for whom the grantor is vicariously liable.

Efficacy of Domestic APT's

Although domestic APT's are becoming an increasingly common asset protection device, their effectiveness has not been thoroughly tested in U.S. courts. APT's may be vulnerable to being set aside in bankruptcy court or in accordance with an out-of-state judgment. Even so, the mere existence of an APT is likely to act as a significant deterrent to a prospective plaintiff weighing the heavy costs of litigation against the likelihood of successful recovery.

Bankruptcy Court

No state statute can protect debtors from conflicting federal law. Federal bankruptcy law supersedes state law under the Supremacy Clause of the US Constitution. Thus, a bankruptcy court sitting in Connecticut could set aside an Alaska APT as being contrary to the public policy of Connecticut.

Full Faith & Credit

The Full Faith and Credit Clause of the U.S. Constitution requires courts of each state to recognize judgments rendered by courts of another state. As long as the rendering court has proper jurisdiction and the judgment was not fraudulent, the other state court must recognize it and give it the full effect that such judgment would have had if rendered by the state's own court.

Jurisdiction

A creditor must proceed in a state court that has jurisdiction over some aspect of the trust (this does not necessarily mean the state in which the APT was settled). The court will either have personal jurisdiction over the trustee, grantor, or beneficiaries, or in rem jurisdiction over trust assets.

There are several ways to obtain personal jurisdiction over a trustee, grantor, or beneficiary:

- Domicile: Individuals are always subject to jurisdiction of courts within their domiciles.
- Long-Arm: Long-arm jurisdiction arises if the trustee or grantor has sufficient contacts with the forum state.
- Corporations: Corporations are subject to jurisdiction of courts in their state of incorporation and any state in which they conduct business.

There are also several ways to obtain in rem jurisdiction over the trust assets. State courts have jurisdiction over all property within the state's borders, including real property, bank and brokerage accounts, and shares of stock of corporations incorporated in that state. If a trust holds stock in many different corporations, its property may be subject to the jurisdiction of several states' courts.

Enforcement of Judgment

If a creditor has successfully obtained a judgment from another state's court, it must find a way to have it enforced against the assets of the APT. If the other state court's jurisdiction is based on the situs of trust assets, that court could compel the surrender of assets by court order (attachment, garnishment, etc.), forcing the party in possession to convey the assets to the creditor.

If the court's jurisdiction is over the trustee or the grantor, but not over the assets, the court might issue an order against the trustee or the grantor. Otherwise, the creditor must seek enforcement of the judgment in the state where the trust assets are located. This judgment may be enforced under the Full Faith & Credit Clause and might authorize the turnover of trust assets located in that state. To avoid this result a practitioner might consider the use of a limited liability entity such as a limited liability company or partnership formed in the state in which the trust sits to hold the assets that would otherwise be owned directly by the trust. The trust would then own the entity, rather than the assets themselves, and it may be more difficult to find that in rem jurisdiction exists in another state.

Integration with Other Planning

An APT is not a stand-alone device. Rather, asset protection planning is part of an overall wealth preservation and management process that includes investment advice, insurance planning, income tax planning, estate planning and wealth protection.

Candidates for APT's include: professionals; individuals exposed to lawsuits arising from negligence, intentional torts, and contractual claims; officers, directors, and fiduciaries; and real estate owners with exposure to environmental claims.

II. Tax Consequences Relating to APT's

Federal Income Tax Treatment

If the grantor of an APT retains the right to receive discretionary income and principal distributions, the trust will be a grantor trust. Grantor trusts are disregarded entities and all trust income, whether or not received by the grantor, is taxed to the grantor. However, if distributions to the grantor must be approved by an adverse party, it could be a non-grantor trust, insulating the grantor from tax liability. PLR 200247013.

Gift Tax

A transfer to an irrevocable trust is not automatically a completed gift. However, a transfer to an APT is a completed gift if the grantor surrenders control over the assets transferred. Even if a grantor retains a certain amount of control over the assets, the inability of the grantor's creditors to reach the assets typically negates that retained control and would result in a completed gift. PLR 9837007. On the other hand, if the grantor retains certain limited powers of appointment, such as a limited testamentary power of appointment, the transfer will not be a completed gift and the resulting potential gift tax consequences can be avoided. PLR 200148028.

Escaping Income Tax and Gift Tax

Two private letter rulings permit the grantor to escape both income tax and gift tax. In these rulings, the grantor was not deemed the owner of the trust due to the existence of adverse parties who exercised discretion in making distributions, protecting him from income taxation. The same rulings further held that the grantor did not make completed gifts to an irrevocable trust, due to the retention of a limited testamentary power of appointment. PLR's 200148028 and 200247013

Estate Tax

Inclusion of the trust assets in the gross estate depends on the degree of control the grantor retains in the trust. The receipt of income or principal in the sole discretion of the independent trustee is not a retained interest in the trust that would compel inclusion of the assets in the grantor's estate, absent an understanding with the trustee. §2036(a). However, in some instances the inability of creditors to reach trust assets negates the implied ability to revoke or terminate the trust and could keep the assets out of the grantor's estate. §2038(a). In that instance, the transfer would have been a completed gift at the time it was made, or some time prior to the grantor's death, and the gift tax ramifications of the gift would have to be accounted for at that time.

III. Attorney Protocol for Establishing APT's

Due to ethical constraints, as well as the potential for civil or even criminal liability under certain circumstances, attorneys must be extraordinarily cautious in accepting and counseling clients with regard to the establishment of an APT. It is imperative that attorneys be fully aware of the client's financial and legal situation, which should be independently verified through due diligence procedures to uncover any existing, foreseeable or threatened claims. Due diligence involves an objective investigation of the client's personal finances, business dealings, legal record and other relevant information.

Attorneys should also perform an analysis of the client's financial solvency. This analysis includes the preparation of a net worth statement reflecting all of the client's assets, subtracting all debts, liabilities, and claims, and subtracting assets that are already protected from creditors' claims under federal or state law *(e.g.*, homestead, qualified retirement plans, insurance and annuities).

There is no magic number or safe harbor percentage in the value of the assets that may be transferred to the trust. However, a larger transfer of assets to the APT reduces the client's remaining solvency and increases the likelihood of scrutiny. Many commentators and practitioners recommend transferring less than one-third (1/3) of the grantor's net worth. The factors to consider include the dollar amount of assets transferred, the nature of the client's business and professional activities, the potential source of any claims and any additional asset protection planning tools available to the client. The goal should be to leave sufficient wealth to satisfy existing and foreseeable creditors. Providing adequate reserves for such claimants diminishes the odds of a successful fraudulent transfer assertion.

Without the benefit of hindsight, it is impossible to determine what will be deemed an appropriate level of due diligence. Such determination will depend upon the specific facts and circumstances presented by each client. However, the potential consequences of a failure to conduct sufficient due diligence in planning for an APT warrants an abundance of caution.

Conclusion

The litigation explosion that manifested itself in the American economy during the later half of the 20th century shows no signs of slowing down. Nowhere is it written, however, that an individual must preserve his or her assets for the satisfaction of unknown future claims and

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Tax Tip for 2004
Oregon 529 College Savings Network

*C. Jeffrey Abbott**

This Article is not intended as a summary of Internal Revenue Code Section 529 but relates more specially to the Oregon Rules relating to Section 529 Plans. 2003 HB 2664 amended Oregon's version of section 529 Plans to make it more in line with Section 529 of the Internal Revenue Code. The bill makes changes to ORS 348.841 through ORS 348.873 as well as ORS 316.699. ORS 316.699 allows an Oregon Income Tax deduction for individuals contributing to a College Savings Network Account established under ORS 348.841 to ORS 348.873. The change to 316.699 now allows the contributor to deduct a contribution made not only during the tax year but anytime before the 15th day of the fourth month following the close of the tax year. ORS 316.699 (4). In other words, the deduction is allowed for purposes of a deduction against Oregon Income Tax Return calculations after the close of tax year. In general, for most taxpayers, this will be the April 15th following the close of the previous calendar year. It is important to note that the April 15th is statutory and therefore does not include the period beyond the April 15th date even if the tax return is extended. The deduction allowed for Oregon Income Tax purposes is $2,000.00 for a tax year, $1,000.00 for those married filing separately. ORS 316.699 (2)(A). Amounts contributed in excess of the deductible limit maybe carried forward for four succeeding tax years until the carried forward has either expired or is used up. ORS 316.699 (3).

Care should be taken to make sure that any contributions made to a 529 College Plan is managed by the State of Oregon if an Oregon income tax deduction is desired. The deduction from Oregon Income is not allowed for contributions to non-Oregon State sponsored 529 Plans. Those include the Oregon College Savings Plan, the MSF 529 Savings Plan, and the U.S.A. College Connect Plan, but taxpayers or practitioners should double check at the time of investment. The benefit, of course, for contributing to an Oregon 529 Plan is the Oregon income tax deduction. For those who pay Oregon Income Tax at the highest rate of 9%, it is almost like receiving a 9% return on contributions up to the Oregon deductible limits. The deduction is available measured from the contributor level. Therefore, setting up accounts for more than one beneficiary does not increase the deductible amounts. A contributor also does not have to be concerned with income limits in order to take advantage of the Oregon deduction. It also appears that the beneficiary of the Oregon College Savings Plan does not have to be a resident of Oregon nor attend Oregon schools. Thus, it allows the Oregon taxpayer to set up Oregon College Savings Plans for those living in states other than Oregon. Those interested in the Oregon 529 College Savings Network should also refer to the general rules under Section 529 of the Internal Revenue Code as well as referring to the Oregon Revised Statues for Oregon specific rules.

Footnote:

*Abbott & Associates, P.C., West Linn

Tax Humor

From a tax point of view you're better off raising horses or cattle than children.
— Patricia R. Schroeder

If you are truly serious about preparing your child for the future, don't teach him to subtract – teach him to deduct. — Fran Lebowitz

One information-reporting requirement added in 1986 required people to include on their tax returns Social Security numbers of all dependents over age two. This caused seven million dependents to disappear from the tax rolls.

— Michael J. Graetz

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claimants. With the enactment of legislation in Delaware, Alaska, Nevada, Oklahoma, Rhode Island and Utah expressly authorizing the establishment of domestic APT's, asset protection planning has entered a new era. APT's formed under the proper circumstances and with the requisite due diligence can be expected to play an increasing role in the estate planning process for professionals and business owners.

Footnote

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Public Law 86-272: A Primer

Part 1

*Gary Holcomb and Valerie Sasaki**

This article is the first of a two part series. Here the text of Public Law 86-272 and Supreme Court analysis of its parameters will be examined. In the next edition of this newsletter Public Law 86-272 will be examined in the context of state taxing mechanisms with particular attention to typical problems encountered by practitioners.

I. Public Law 86-272

Public Law 86-272 ("PL 86-272")[1] prevents state and local jurisdictions from imposing a net income tax on the income derived from sources within the jurisdiction by any person in interstate commerce, if the only business activities within the state by or on behalf of such person during the taxable year is "the solicitation of orders by such person (or his representative) in the state for sales of tangible personal property, where the orders are sent outside the state for approval or rejection, and if approved, are filled by shipment from a point outside the state."[2]

By its terms, PL 86-272 protection is limited to taxes imposed on net income, transactions involving solicitation for the sale of tangible personal property in interstate commerce, and transactions where orders are approved and fulfilled from out of state. If a company's, or its representative's, activities fall within the safe harbor protections, income derived from the transaction will be exempt from the state or local net income tax.

II. What is an Impermissible Activity Under PL 86-272?

The question often arises as to which activities are protected by PL 86-272 and which activities fall outside of the scope of its protections. PL 86-272 does not define the term "solicitation of orders." There was no clear standard until the US Supreme Court's opinion in *Wisconsin Dept. of Revenue v. William Wrigley, Jr., Co.*.[3]

In that case, the taxpayer ("Wrigley") was the world's largest chewing gum manufacturer, and was based in Chicago. During the years in question, Wrigley did not have a telephone listing, own or lease office space, or own or operate any manufacturing or warehouse facility in Wisconsin. Wrigley did not maintain a bank account in Wisconsin, and all Wisconsin advertising was performed through a contract with an independent agency in Illinois. Wisconsin orders were sent to Chicago for acceptance and were filled through common carrier from outside of Wisconsin.

Wrigley sold gum throughout the United States using a sales staff that divided its activities between districts, regions and territories. The regional manager for the Milwaukee, Wisconsin region split his time between soliciting orders from Wrigley's key accounts and personnel-related functions. One regional manager maintained an office in the basement of his home in Wisconsin for the purpose of holding sales-related meetings.

Wrigley supplied each sales representative with a company car, a stock of gum, a supply of display racks and promotional literature. The sales representatives kept the sales materials at their homes. In addition to handing out promotional materials and free samples when visiting key accounts, the sales representatives provided free display racks to their customers and filled retailers' countertop display cases with gum for a charge. These refills were called "agency stock checks."[4]

The Court concluded that "solicitation" includes not only requests for purchases but also those activities that are "entirely ancillary to requests for purchases." It stated, "We think it evident that in [PL 86-272] the term [solicitation] includes, not just explicit verbal requests for orders, but also any speech or conduct that implicitly invites an order."[5] The Court considered ancillary activities to be "those activities that serve no independent business function apart from their connection to the soliciting of orders." It held furnishing the representatives with company cars and stocks of free samples to be ancillary to requests for purchases. However, the Court held that the replacement of stale gum, the supplying of gum through agency stock checks, and the storage of gum exceeded solicitation and resulted in forfeiture of PL 86-272 protection.[6] The Court declined to decide whether any of the unprotected activities were individually de minimus, holding that, when taken together they were not de minimus.[7]

Justice Kennedy wrote a strong dissent in *Wrigley* and proposed that the standard to determine whether activities exceeded the protection of PL 86-272 should be whether a reasonable buyer would consider the activities to provide significant independent value. This is effectively a "value added" test to be viewed from the perspective of the retailer. Under this standard, small acts of courtesy (such as the replacement of stale gum) in the course of solicitation would not result in forfeiture of a taxpayer's PL 86-272 protection.[8]

Since *Wrigley*, courts have attempted to define the parameters of what constitutes protected solicitation and what activities are unprotected and result in a taxpayer for-

feiting the protection under PL 86-272. Although the Ninth Circuit has not examined *Wrigley*, courts in California and Oregon have done so (respectively) in *Brown Group Retail, Inc. v. Franchise Tax Board* and *Estee Lauder Services, Inc. v. Dept. of Revenue*.[10]

In *Brown Group Retail, Inc. v. Franchise Tax Board* ("Brown Group"), the taxpayer was a Missouri shoe manufacturer and distributor. It sold and distributed shoes to thousands of independent and unrelated entities nationwide as well as to several related shoe-retailing companies. It did not maintain any warehouse, store, factory, office or other facility in California. It did not own any real or tangible personal property in California except for cars that it leased for exclusive use by its sales representatives. Orders were sent from the customer in California to the Missouri office and products were shipped by common carrier from outside California. Brown Group had a sales force in California and two employees who helped independent retail distributors establish and enhance their retail outlets. They helped to "develop new business opportunities for retailers in expanding their businesses, with the hope that Brown would benefit by means of increase sales."[11]

The court found that, while these activities may have ultimately resulted in increased sales for Brown Group, they were not request-related activities and did not facilitate the requesting of sales.[12] It was not enough that the activity facilitated sales, it must have facilitated the requesting of sales to constitute protected solicitation. Although Brown Group did not charge for these services, the court did not find that payment was dispositive of the issue whether the activities were protected. "Many of the activities offered are not at all related to sales and are the type which a smaller retailer would have to pay a marketing or management service to duplicate." The court opined that the activities of these employees would be unprotected under the standards set forth under the *Wrigley* majority or dissenting opinions.

The Oregon Tax Court's Magistrate Division examined the scope of PL 86-272 protections in *Estee Lauder Services, Inc. v. Dept. of Revenue*. In that case, the taxpayer was one of ten corporations owned by the same entity and one of five service corporations. The other five corporations were manufacturing corporations. The taxpayer was a service corporation that solicited sales of cosmetics manufactured by the manufacturing entities under a "cost plus" services agreement. It argued that it should not be required to include sales from the manufacturing entities in its sales factor numerator.

The main focus of the *Estee Lauder* case was whether the court would respect the taxpayer's multiple corporation organizational scheme. The court went through an analysis under *In Appeal of Joyce, Inc.*.[13] The court concluded that the taxpayer was a sales representative for the manufacturing corporations and its activities were attributable to the manufacturing corporation. The court then examined whether the taxpayer's activities were protected solicitation under PL 86-272. Similar to Wrigley, it found that some activities that the taxpayer performed were protected. However, the taxpayer also conducted inventory-related activities such as forecasting, measuring brand loyalty, and long-term inventory planning. These activities were not ancillary to solicitation, and were not protected under PL 86-272. The court held that the sales apportionment factor for the unitary group must include the manufacturing corporations' Oregon destination sales.

III. Representatives and Independent Contractors

Many of the issues associated with a foreign company's sales into a state involve activities performed by its representatives on behalf of the company. The protections of PL 86-272 also contemplate situations involving an independent contractor in the taxing jurisdiction. Companies are not considered to have engaged in business activities within a state during any taxable year "merely by reason of sales in such State, or the solicitation of orders for sales in such State of tangible personal property on behalf of such person by one or more independent contractors, or by reason of the maintenance of an office in such state by one or more independent contractors whose activities on behalf of such person in such state consist solely of making sales, or soliciting orders for sales, or tangible personal property."

Independent contractors are defined as a "commission agent, broker, or other independent contractor." To be independent, the contractor must be both factually independent (*i.e.*, be an independent contractor in the common law sense, as opposed to an employee or agent), and must represent more than one principal. Thus, PL 86-272 distinguishes between the "representative" and the "independent contractor." The term "representative" does not include an independent contractor. A representative's protected in-state activities are limited to solicitation. However, an independent contractor can still quality for the protection of PL 86-272 while "making" a sale (*i.e.*, accepting an order in the taxing jurisdiction) and maintaining an office in the jurisdiction if it is his or her own office and not that of the out-of-state principal.

IV. Conclusion

Public Law 86-272 provides a useful safe harbor for clients who have sales into non-domicile jurisdictions. However, a prudent practitioner should consider the entire scope of a client's activities (or the activities of their representatives) in the jurisdiction and the character of their sales relationships when considering the use of the protection afforded by Congress.

All information provided is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act

upon such information without professional advice after a thorough examination of the particular situation.

Footnotes:

1. 15 USC §381 et seq.
2. 15 USC §§381(a)(1), (2).
3. 505 U.S. 214 (1992).
4. *Wrigley*, at 216-220.
5. *Wrigley*, at 223.
6. *Wrigley*, at 232-233.
7. *Wrigley*, at 235.
8. *Wrigley*, at 236, 244.
9. 44 Cal. App. 4th 823.
10. TC-MD 982900D (October 30, 2000).
11. *Brown Group*, at 828.
12. *Brown Group*, at 828.
13. [1966-1976 Transfer Binder] Cal St Tax Reptr (CCH) P203-523 (Nov. 23, 1966) A detailed analysis of *Joyce* is beyond the scope of this article.
14. 15 USC §381(c).
15. 15 USC §381(d).

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Upcoming Tax Meetings

PORTLAND

Portland Luncheon Series
Contact: Mark Huglin – mark@draneaslaw.com

Portland Tax Forum
Contact: Mark Golding – mgolding@pfgglaw.com

Tax Litigation Club
Contact: Christina Moran – Christina.L.Moran@irscounsel.treas.gov

SALEM

Mid-Valley Tax Forum
Contact: Barbara Smith – bjsmith@mail.heltzel.com

December, 2004	no meeting
January, 2004	to be announced

EUGENE

Eugene – Springfield Tax Association
Contact: Ian Richardson – richardson@orbuslaw.com

February 22, 2005 – "They're Coming:" Current IRS and Class Action Challenges to Tax Exempt Status of Hospitals and Universities, Nonprofit Executive Compensation, and Related Issues.
Speaker: William Manne, Esq.; Miller Nash LLP

Eugene Estate Planning Council
Contact: John Thomas – jthomas@pbcins.com

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