

## Income/Franchise:

### California: Out-of-State Investors Deemed as Doing Business Based on Property Owned Through LLC

*OTA Case Nos. 18083638, 19014240 (2021 – OTA – 218P)*, Cal. Off. of Tax App. (5/13/21). In a recently published precedential opinion, the California Office of Tax Appeals (OTA) held that two out-of-state limited liability company investors (“investor LLCs”) were “doing business” in California because their respective member distributive shares of real and tangible property held by two limited liability companies in California exceeded the bright-line property threshold found in Cal. Rev. & Tax Code section 23101(b)(3). In doing so, the OTA rejected the investor LLCs’ claims that they were *not* doing business in California under Cal. Rev. & Tax Code section 23101(a) and pursuant to certain 2017 case law – which held that an out-of-state corporation was not “doing business” in California when the corporation’s only connection to California was its passive ownership of a 0.2% membership interest in a California-based manager-managed limited liability company [see previously issued Multistate Tax Alert for more details on this 2017 decision] – explaining that the dispute in that 2017 case concerned a tax year before enactment of Cal. Rev. & Tax Code section 23101(b) and thus Cal. Rev. & Tax Code section 23101(b) did *not* apply to that taxpayer.

**URL:** [https://ota.ca.gov/wp-content/uploads/sites/54/2021/07/18083638\\_LA-Hotel-Investments\\_Opinion\\_Revised\\_P.pdf](https://ota.ca.gov/wp-content/uploads/sites/54/2021/07/18083638_LA-Hotel-Investments_Opinion_Revised_P.pdf)

**URL:** <https://www2.deloitte.com/us/en/pages/tax/articles/california-ftb-issues-guidance-on-application-of-swart-decision.html?id=us:2em:3na:stm:awa:tax:080621&sfid=7015Y000003WdKEQA0>

The OTA reasoned that the investor LLCs in this case are subject to Cal. Rev. & Tax Code section 23101(b) for the tax years at issue because the provision went into effect for tax years 2011 and forward. Under the facts in this case, the two investor LLCs were members in two limited liability companies holding substantial buildings and other depreciable assets and land in California, which resulted in the investor LLCs each exceeding the statutory \$50,000 property threshold (adjusted for inflation) based on their distributive shares of such California property. Accordingly, the OTA held that the investor LLCs were “doing business” in California under Cal. Rev. & Tax Code section 23101(b)(3) and thus subject to California’s annual \$800 limited liability company tax for the years at issue. Please contact us with any questions.

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