

Income/Franchise:

California: Investor's Profit Interest, Not Capital Interest, in LLC Determines "Doing Business" Status

Case No. 19044718, Cal. Off. of Tax App. (5/26/22). In a pending precedential opinion addressing whether an out-of-state limited liability company is "doing business" in California within the meaning of Cal. Rev. & Tax Code section 23101 (and thus owing California's \$800 annual tax on such entities) when the entity's only connection to California is its pass-through ownership interest through a multi-tiered ownership structure in a California-based limited liability company (LLC), the California Office of Tax Appeals held that the correct measure for determining the investor's distributive share of property for California tax purposes and meeting California's annual bright-line property threshold for doing business in the State is its *profit interest* in the LLC rather than its *capital interest* in the LLC. Accordingly, under the provided facts for four of the five tax years at issue, the out-of-state entity was *not* doing business in California under Cal. Rev. & Tax Code section 23101(a) and thus was *not* subject to the annual \$800 LLC tax for the 2013 and 2014 tax years; however, the entity was doing business in California under Cal. Rev. & Tax Code section 23101(a) and was subject to the annual \$800 LLC tax for the 2015 and 2016 tax years.

URL: <https://ota.ca.gov/wp-content/uploads/sites/54/2022/08/19044718-MJK-Real-Estate-Fund-Opinion-052622wm-1.pdf>

See forthcoming Multistate Tax Alert for more details on this ruling, including some related taxpayer considerations, and please contact us with any questions in the meantime.

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