

Income/Franchise:

California: Trade Association Files Complaint Against FTB's Recent Memo on P.L. 86-272 Limits

An industry trade association has filed a complaint with a California superior court for declaratory and injunctive relief against the California Franchise Tax Board (FTB), asking the court to declare invalid the FTB's Technical Advice Memorandum (TAM) 2022-01 [see previously issued Multistate Tax Alert for more details on this FTB memo] addressing the application of P.L. 86-272 to activities conducted via the internet, as well as the related FTB publication, FTB 1050. The complaint alleges that this FTB guidance adopts a new interpretation of "a 63-year-old federal law, that directly contradicts the plain language of the federal law and in doing so violates the rights" of its members and other remote retailers. The complaint alleges that this guidance is an announcement by the FTB, without following the applicable rulemaking procedures required by the California Administrative Procedure Act, "of a new standard of general application that purports to limit radically the protections of existing federal law, and expand the taxing authority of the FTB beyond the limits that have existed for decades and that are imposed by federal law and the US Constitution." Please contact us with any questions.

URL: <https://www.ftb.ca.gov/tax-pros/law/technical-advice-memorandums/2022-01.pdf>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/california-franchise-tax-board-guidance-application-pl86272-activities-conducted-internet.pdf>

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