

## Sales/Use/Indirect:

### California: Retailer that Erroneously Collected Tax from Out-of-State Customers Must Remit to State

*OTA Case No. 19125567*, Cal. Off. of Tax App. (8/11/22). In a pending precedential opinion, the California Office of Tax Appeals (OTA) held that the “tax amount” that an in-state retailer erroneously collected from (and did not return to) out-of-state customers located in states where it was not registered to charge or collect a sales or use tax on transactions that were exempt or nontaxable in California must either be remitted to the California Department of Tax and Fee Administration (CDTFA) or refunded to the respective customers as a California “excess tax reimbursement” under state law. In doing so, the OTA explained that the retailer here is presumed under state law to have collected reimbursement for the sales tax (that is, taxes due under California’s sales and use tax law) from its customers and has the burden to establish otherwise, which it failed to do so in this case. The OTA also reasoned that because the retailer was not registered or authorized to collect taxes in the other states at issue, the excess collections cannot constitute reimbursement for those states’ sales or use taxes. Commenting on whether California has a valid claim to the excess tax reimbursements at issue, the OTA noted that the retailer:

**URL:** <https://ota.ca.gov/wp-content/uploads/sites/54/2022/10/19125567-Body-Wise-International-LLC-Opinion-081122wm.pdf>

- Operated out of California;
- Shipped the property at issue via common carrier from its California warehouse; and
- Provided no evidence that there was any title passage provision and thus “completed its performance with respect to delivery of the property in California upon delivery to the common carrier.”

Accordingly, the OTA concluded that “there is sufficient connection or nexus for California to assert liability for the excess tax reimbursement because the sales occurred in this state.” In reaching this conclusion, the OTA rejected the retailer’s claims that the sales at issue must be sourced for sales tax purposes based on the out-of-state ultimate destination/customer location. Please contact us with any questions.

— Galina Philipovitch (San Jose)  
Managing Director  
Deloitte Tax LLP  
gphilipovitch@deloitte.com

Hal Kessler (San Francisco)  
Managing Director  
Deloitte Tax LLP  
hkessler@deloitte.com

Evita Graciela Lopez (Costa Mesa)  
Managing Director  
Deloitte Tax LLP  
evlopez@deloitte.com

Brian Wiggins (Sacramento)  
Senior Manager  
Deloitte Tax LLP  
bwiggins@deloitte.com

Karri Rozario (Sacramento)  
Senior Manager  
Deloitte Tax LLP  
krozario@deloitte.com

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