

Income/Franchise:

California: Lawsuit Filed by Trade Association that Challenges FTB Memo on P.L. 86-272 Moves Forward

Case No. CGC22601363, Cal. Super. Ct. (11/17/22). A California superior court (Court) recently overruled the California Franchise Tax Board's (FTB) demurrer to an industry trade association's filed complaint for declaratory and injunctive relief against the FTB in a lawsuit that asks 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], which addresses the application of P.L. 86-272 to activities conducted via the internet, as well as the related FTB publication, FTB 1050. The underlying 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 also 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." Because the Court denied this FTB request for early dismissal of the case, the suit continues to move forward. Please contact us with any questions.

URL: <https://webapps.sftc.org/ci/CaseInfo.dll?CaseNum=CGC22601363>

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>

— Christopher Campbell (Los Angeles)
Principal
Deloitte Tax LLP
cwcampbell@deloitte.com

Kathy Freeman (Sacramento)
Managing Director
Deloitte Tax LLP
katfreeman@deloitte.com

Shirley Wei (Los Angeles)
Senior Manager
Deloitte Tax LLP
shiwei@deloitte.com

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte provides industry-leading audit and assurance, tax and legal, consulting, financial advisory, and risk advisory services to nearly 90% of the Fortune Global 500® and thousands of private companies. Our professionals deliver measurable and lasting results that help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society and a sustainable world. Building on its 175-plus year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte’s approximately 415,000 people worldwide make an impact that matters at www.deloitte.com.