

Administrative:

California OTA Proposes Rule Changes that Limit its Authority to Declare Regulations Invalid

Proposed Amendments to California Code of Regulations, Title 18, Division 4.1 (Office of Tax Appeals Rules for Tax Appeals), section 30104, Cal. OTA (2/23). The California Office of Tax Appeals (OTA) is proposing various changes to its rules governing the administrative review processes for all appeals and related claims for reimbursement of fees and expenses filed with OTA (*i.e.*, the “Rules for Tax Appeals”), including one proposed amendment that would limit the OTA’s authority to declare California administrative regulations invalid or unenforceable. Specifically, this proposed amendment states that areas where the OTA does *not* have jurisdiction include, but are not limited to, “whether a provision in the California Code of Regulations is invalid or unenforceable, or whether OTA may otherwise refuse to follow an applicable provision in the California Code of Regulations, unless a federal or California appellate court has already made such a determination.” The proposal then lists the following examples of such OTA limitations:

URL: <https://ota.ca.gov/wp-content/uploads/sites/54/2023/02/Proposed-Amendments-to-OTA-Rules-for-Tax-Appeals-2023-No.-1-with-tracking.pdf>

1. OTA does not have jurisdiction to determine whether an “Agency’s” (defined to include government agencies such as the California Franchise Tax Board and California Department of Tax and Fee Administration) regulation contained in the California Code of Regulations is invalid on the basis that it conflicts with a provision of the California Revenue and Taxation Code, or to refuse to follow the regulation on that basis;
2. OTA does not have jurisdiction to determine whether an Agency’s regulation contained in the California Code of Regulations is invalid on the basis that it conflicts with another regulation contained in the California Code of Regulations and promulgated by that Agency, or to refuse to follow the regulation on that basis; and
3. OTA does not have jurisdiction to determine whether a provision of OTA’s Rules for Tax Appeals is invalid, or to refuse to follow the regulation on that basis.

The OTA recently held an interested parties meeting on March 20, 2023, to discuss its proposed amendments to the Rules for Tax Appeals. Please contact us with any related questions.

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

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

Robert Waldow (Minneapolis)
Principal
Deloitte Tax LLP
rwaldow@deloitte.com

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

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