

Sales/Use/Indirect:

California: Trade Association Asks US Supreme Court to Review Case Involving Online Remote Sellers

Docket No. 22-1076, petition for cert. filed 5/3/23. A trade association representing online remote sellers has asked the US Supreme Court to review whether it may pursue a challenge in federal court against California's attempt to collect sales tax from its members whose inventory was held in a nonaffiliated marketplace facilitator's in-state warehouses – specifically, whether:

URL: <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/22-1076.html>

1. The federal Tax Injunction Act (TIA) applies differently based on whether the plaintiff is a putative taxpayer or a “third party,” and
2. Plaintiffs who cannot challenge tax information demands in state court have an adequate remedy to challenge those demands in state court.

In the underlying case, the trade association argued, among other claims, that California's attempts to collect sales tax from its online merchant members on their sales to in-state residents before October 2019 violated their rights under the US Constitution and the federal Internet Tax Freedom Act given that their contacts with California were limited to in-state storage of merchandise. In 2022, the United States Court of Appeals for the Ninth Circuit affirmed the district court's dismissal of the lawsuit to enjoin collection of California sales and use taxes as being barred by the TIA [see Case No. 21-16911, US 9th Cir. (November 9, 2022) for more details on the Ninth Circuit's ruling]. Please contact us with any questions.

URL: <https://cdn.ca9.uscourts.gov/datastore/opinions/2022/11/09/21-16911.pdf>

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

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

Rick Heller (Morristown)
Managing Director
Deloitte Tax LLP
rickheller@deloitte.com

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

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

Evita Graciela Lopez (Costa Mesa)
Senior Manager
Deloitte Tax LLP
evlopez@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.