

Income/Franchise:

California: Combined Group's Activities Related to Deductible Income Deemed Includible in Apportionment Factor

Case No. 19034447, 2023 – OTA – 42P, Cal. Office of Tax App. (3/17/23), petition for rehearing denied June 26, 2023. In a pending precedential opinion, the California Office of Tax Appeals (OTA) had concluded that for the taxable years at issue (2008 through 2011), the taxpayer properly included in its combined reporting group's apportionment percentage its property, payroll, and sales attributable to income deducted under California Revenue and Taxation Code (CRTC) section 24404. In doing so, the OTA disagreed with the California Franchise Tax Board's (FTB) longstanding position under FTB Legal Ruling 2006-01 that factors related to deducted income are not includible in the apportionment percentage. Most recently, the OTA issued an opinion denying the FTB's underlying petition for rehearing; the FTB had contended, among others, that the apportionment formula only reflects activities giving rise to positive business income and therefore activities that result in income that is exempted, excluded, deducted, or not recognized are not included in the apportionment formula, such as those related to income deducted under CRTC section 24404.

URL: <https://ota.ca.gov/wp-content/uploads/sites/54/2023/08/19034447-Southern-Minnesota-Beet-Sugar-Opinion-031723wm-2.pdf>

URL: <https://ota.ca.gov/wp-content/uploads/sites/54/2023/08/19034447-Southern-Minnesota-Beet-Sugar-PFR-Opinion-062623wm.pdf>

See recently issued Multistate Tax Alert for more details on this ruling, including some related taxpayer considerations, and please contact us with any questions.

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-californi-ota-activities-related-to-deductible-income-permitted-in-apportionment-factor.pdf>

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