

## Income/Franchise:

### California Superior Court Denies Summary Judgment in Case Challenging FTB Guidance on P.L. 86-272

*Case No. CGC-22-601363*, Cal. Super. Ct. (8/29/23). In a lawsuit involving an industry trade association challenging the validity of the California Franchise Tax Board's (FTB) Technical Advice Memorandum (TAM) 2022-01 [see previously issued Multistate Tax Alert for more details on this FTB memo] and related FTB publication (FTB 1050) addressing the application of P.L. 86-272 to activities conducted via the internet [see *State Tax Matters*, Issue 2022-34, for more details on the industry trade association's original filed complaint], a California superior court (Court) recently denied the trade association's motion for summary judgment. This motion had sought a judicial declaration that these two FTB documents are invalid because they contradict P.L. 86-272 and the US Constitution. In denying the motion, the Court explained that although these two FTB documents "raise significant concerns as to the FTB's interpretation and application of P.L. 86-272," it cannot conclude as a matter of law that the use of generic hypotheticals in these documents contradict P.L. 86-272 on their face such that the entire documents are invalid. According to the Court, the industry trade association relied upon the use of general fact patterns in the two FTB documents to seek summary judgment "without adequate supporting facts or substantive argument regarding post-sales assistance and internet cookies." However, the Court determined that the two FTB documents constitute a regulation not enacted in compliance with the California Administrative Procedure Act, and are therefore void, but explained that it could not consider summary judgment on this basis because the industry trade association did not move for summary judgment on this ground. Please contact us with any questions.

**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>

**URL:** [https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220826\\_1.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220826_1.html)

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