

Income/Franchise:

California OTA Says It Lacks Authority to Declare Rule Invalid and FTB Correctly Sourced Mutual Fund Service Receipts

Case No. 20096605, 2023 – OTA – 443, Cal. Office of Tax App. (7/27/23). In a nonprecedential opinion, the California Office of Tax Appeals (OTA) recently concluded that the OTA does not have jurisdiction to determine if the California Franchise Tax Board properly promulgated California Code of Regulations, title 18, (Regulation) section 25137-14 under the California Administrative Procedure Act (APA). In doing so, two members of the OTA panel explained that under the APA, the California Office of Administrative Law (OAL) is the only state agency vested with the authority to determine whether another agency's regulation complied with the APA [see also *State Tax Matters*, Issue 2023-32, for details regarding the OTA's pending opinion request to the California Attorney General to issue a formal opinion addressing whether the OTA has the legal authority and jurisdiction to declare a provision in the California Code of Regulations to be invalid.] As a result, the panel then considered whether Regulation section 25137-14 is the standard apportionment rule for assigning the taxpayer's mutual fund service receipts. The OTA concluded that for the taxable years at issue (2013 through 2016) the taxpayer had not provided evidence demonstrating that the standard formula is an unfair representation of its in-state business activity to warrant application of California Revenue and Taxation Code (CRTC) section 25137, and thus, Regulation section 25137-14 is the standard apportionment rule for sourcing the taxpayer's receipts. In a concurring opinion, an OTA panel member stated that even assuming the OTA had jurisdiction to invalidate a regulation, the taxpayer had not met its burden of proving (that it was entitled to a refund by producing evidence to support) its proposed sourcing methodology under CRTC section 25136 and Regulation section 25136-2. Please contact us with any questions.

URL: <https://ota.ca.gov/wp-content/uploads/sites/54/2023/09/20096605-Janus-Capital-Group-Opinion-072723wm.pdf>

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/STM/230811_2.html

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