

## Income/Franchise:

### California FTB Asks Superior Court to Narrow Recent Judgment Declaring its P.L. 86-272 Guidance Invalid

*Case No. CGC-22-601363*, Cal. Super. Ct. (motion to vacate and modify judgment filed 12/29/23). 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 (Publication 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], the FTB filed a motion for the California superior court (Court) to vacate and modify its recent judgment, which overall had concluded that TAM 2022-01 and Publication 1050 were void because they constituted regulations that were required to be adopted, but were not adopted, in compliance with the California Administrative Procedure Act (APA). In the motion, the FTB requests that the Court vacate its December 18, 2023 judgment and replace it with a judgment that conforms to its December 13, 2023 order and applicable law [see previously issued Multistate Tax Alert for more details on the California superior court's December 13, 2023 order and December 18, 2023 judgment] – claiming that certain language in the December 18, 2023 judgment is “overly broad and ambiguous” and inconsistent with the Court's December 13, 2023 order. Under the Court's December 18, 2023 judgment, TAM 2022-01 and Publication 1050 are “declared void and without force or effect, and their guidance may not be relied upon.” Please contact us with any questions.

**URL:** <https://webapps.sftc.org/ci/CaseInfo.dll?&SessionID=2DE66B2EDCB2C94338466ACA8127855C105ABBC1>

**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.deloitte.com/Newsletters/Tax/2022/STM/220826\\_1.html](https://dhub.deloitte.com/Newsletters/Tax/2022/STM/220826_1.html)

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-california-court-declares-franchise-tax-board-pl-86-272-guidance-invalid.pdf>

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