

Income/Franchise:

California Superior Court Sustains that Franchise Tax Board's P.L. 86-272 Guidance is Invalid

Case No. CGC-22-601363, Cal. Super. Ct. (2/13/24). A California superior court (Court) has denied the California Franchise Tax Board's (FTB) motion to vacate and modify the Court's order from December 2023 [see previously issued Multistate Tax Alert for more details on the December 2023 order], which involved a lawsuit filed by an industry trade association that challenged the validity of the FTB's 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. The Court concluded that these two publications 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). Please contact us with any questions.

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

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>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/california-franchise-tax-board-guidance-application-pl86272-activities-conducted-internet.pdf>

— Valerie Dickerson (Washington, DC)
Partner
Deloitte Tax LLP
vdickerson@deloitte.com

Jairaj Guleria (San Francisco)
Partner
Deloitte Tax LLP
jguleria@deloitte.com

Roburt Waldow (Minneapolis)
Principal
Deloitte Tax LLP
rwaldow@deloitte.com

Kathy Freeman (Sacramento)
Managing Director
Deloitte Tax LLP
katfreeman@deloitte.com

Christopher Campbell (Los Angeles)
Principal
Deloitte Tax LLP
cwcampbell@deloitte.com

Shirley Wei (Los Angeles)
Senior Manager
Deloitte Tax LLP
shiwei@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.