

Income/Franchise:

California: Taxpayer Associations Challenge Validity of Newly Enacted Apportionment Legislation

Case No. 24CV016118, Cal. Super. Ct., Sacramento County (complaint filed 8/14/24); Case No. 24CECG03564, Cal. Super. Ct., Fresno County (complaint filed 8/15/24). In separate complaints, two taxpayer associations have challenged the validity of recently enacted California legislation that adds Cal. Rev. & Tax Code section 25128.9 and essentially provides for retroactive application of the California Franchise Tax Board's Legal Ruling 2006-1 issued on April 28, 2006, with respect to the treatment of apportionment factors attributable to income exempt from California Corporation Tax Law [see S.B. 167, signed by gov. 6/27/24, and previously issued Multistate Tax Alert (July 1, 2024), for more details on this legislation]. One filed complaint seeks a declaratory ruling to prevent California from applying Cal. Rev. & Tax Code section 25128.9 either in its entirety due to alleged violation of the US Constitution or, in the alternative, retroactively due to alleged violations of the US and California Constitutions. The other filed complaint alleges that while the recently enacted legislation purports to be a "clarification" of the Uniform Division of Income for Tax Purposes Act (UDITPA), it is actually "a significant change in California's income tax apportionment laws which have been in place for more than 57 years since UDITPA was enacted in 1966." Accordingly, the complaint argues that because the legislation is not a "clarification," it must be characterized as a retroactive statutory change, modifying laws enacted in 1966 – which is an "unprecedented and unreasonable period of retroactivity" that allegedly violates California taxpayers' due process rights under the US Constitution. Please contact us with any questions.

URL: https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=202320240SB167

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-california-enacts-senate-bills-167-and-175-on-nols-and-credits.pdf>

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