

Income/Franchise:

California Office of Tax Appeals Issues Decision on Nonqualified Entity's Jurisdiction to Appeal

OTA Case No. 22029627, Cal. Off. of Tax App. (2/27/25). In an opinion involving whether a nonqualified foreign corporation that did not register with the California Secretary of State (SOS) may maintain an appeal with the California Office of Tax Appeals (OTA), the OTA concluded that the corporation was merely “doing business” in California sufficient to require the filing of a return rather than actually “transacting intrastate business,” and therefore it had the capacity to maintain the appeal on the remaining issues. In doing so, the OTA noted that it was reasonable for the California Franchise Tax Board to initially conclude that the corporation’s claimed net operating loss (NOL) and research and development (R&D) credits were generated by it when it had transacted intrastate business in California; however, the OTA held that the corporation in this case provided “compelling evidence to show otherwise.” Under California Corporations Code (“CCC”) section 2105, a “foreign corporation” shall not “transact intrastate business” without having first obtained from the SOS a certificate of qualification, and a foreign corporation that transacts intrastate business without complying with CCC section 2105 cannot maintain any action or proceeding upon any intrastate business so transacted in any California court until it has complied with CCC section 2105. Note that the California Franchise Tax Board has 30 days from this February 27 opinion to petition for rehearing. Please contact us with any questions.

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