

Multistate tax controversy services

California controversy



The California landscape

- Although the State of California has highlighted its rapid recovery from the recession, including sustained job growth and a budgetary surplus, tax increases and the repeal of beneficial tax provisions.
- California's voters approved tax ballot measures mandating income/franchise tax single-sales-factor apportionment for most taxpayers for tax years beginning on or after January 1, 2013, and a temporary increase in the personal income tax rates (effective January 1, 2012).
- Some California legislative changes have led to increased enforcement efforts by tax authorities (e.g., California has expanded its "doing business" statute by adopting bright-line statutory nexus rules effective for tax years beginning on or after January 1, 2011).
- California's recent tax law changes have worked in concert to allow the state to shift more of its tax burden to businesses based outside of the state that sell into the California market.



Navigating the complexities of California controversy

Several options exist for contesting audit adjustments or denials of protest or claims for refund:

- After receipt of the Notice of Proposed Assessment ("NPA"), taxpayers have the right to protest the NPA, and an in-person protest hearing will be held if requested.
- If a protest or claim for refund is denied, taxpayers may file an administrative appeal with the California State Board of Equalization ("SBE"), and a hearing before the five-member SBE will be held if requested by the taxpayer.
- Taxpayers may request to enter the FTB's Settlement Program at any time during the administrative claim, protest, or appeal process; and if no settlement is reached, the case will re-enter the administrative process.
- A closing agreement can be negotiated to settle identified issues for specific years. These agreements may be especially helpful for recurring issues.



California income/franchise tax and common issues

Adding to the complexities of the California income/franchise tax:

- California is a combined reporting/unitary state that only partially conforms to the Internal Revenue Code.
- The state's tax authority, the Franchise Tax Board ("FTB"), is sophisticated and focused in its enforcement of the state's tax laws.
- The Audit and Tax Policy divisions of the FTB have interpreted the income/franchise tax statutes narrowly, and in some cases inconsistently during audits, forcing taxpayers to challenge the state's position.

The more common contentious issues remain those related to apportionment of income (with particular focus on the sales factor under the new and continually-evolving market-based sourcing rules), unitary vs. non-unitary businesses, business vs. nonbusiness income, and nexus.



Why Deloitte?

Deloitte's California controversy team can help you explore potential opportunities with:

- Audits, protests, and appeals
- Audit management
- Refund requests
- Chief Counsel rulings
- Closing agreements
- Voluntary disclosure agreements ("VDAs") or filing compliance agreements ("FCAs")
- Alternative apportionment petitions
- Settlements

Our proactive approach is based upon:

- Deloitte's personnel, including, former FTB Chief counsel, former FTB auditors and a senior counsel and former SBE auditors as well as former state and local tax litigators from law firms.
- Years of experience working with the FTB and SBE
- In-depth knowledge of the state's procedure and informal policies
- Experience with remediating uncertain tax positions and assisting with the state tax audit process and refund requests

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