

California Franchise Tax Board (FTB) to Apply Market-Based Sourcing Rules to Nonresident Directors of California Based Corporations

Tax Talks on **September 11, 2024**

On Monday, September 9, 2024, the California FTB approved [proposed amendments](#) to California's personal income tax code.

This proposed rule would impose California income tax on non-resident/non-employee corporate directors receiving fees for services performed outside of California if the corporation has a commercial domicile in California (presumably because the corporation "receives the benefit of those services" in California). These proposed amendments seem to be the next step by the FTB following [Chief Counsel Ruling 2019-03](#), in which the FTB concluded "[the] value of an independent director's services does not derive from the place from which the Board of Directors confers and makes decisions, but rather from that place the decisions and actions of the Board detailed above are executed."

We observe that most non-resident directors take the position they are not subject to California income tax if they do not perform any services on the ground in California. Further, it is likely that FTB has been asserting this position in current audits.

Finally, if this rule is adopted, it raises further questions, such as (a) how long it will be before FTB extends it to LLC managers or other flow-through leadership, and (b) how long it will be before other states extend their income tax reach to income derived from these kinds of non-resident services.

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