

This Week in State Tax (TWIST)

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California: Attorney General broadens OTA authority over application of rules

The California Attorney General has issued an opinion stating that the Office of Tax Appeals (OTA) is not bound by tax regulations promulgated by the Franchise Tax Board or Department of Tax and Fee Administration in determining matters before it. Recall, the California legislature created the OTA as an “independent and impartial appeals body” charged with assuming certain duties formerly held by the Board of Equalization (BOE), including the ability to conduct tax appeals hearings. While the OTA inherited the adjudicatory powers of the BOE, it was uncertain whether it also had the authority to consider the legal validity of regulations promulgated by the California state tax authorities. The OTA proposed a regulation providing that it had no such authority, but it later retracted the proposed regulation and asked the Attorney General for clarification.

The recently released opinion provides that clarification. After a lengthy analysis of the authority transferred from the BOE, state judicial precedents, and the state constitution, the opinion states that when adjudicating a taxpayer appeal, the OTA may decline to apply a duly promulgated regulation to the taxpayer if doing so would conflict with the governing statute. However, the OTA is required to afford “appropriate deference” to the agency that promulgated the regulation (as would a court on judicial review). Further, the opinion noted that the OTA does not have authority to remove a regulation from the California Code of Regulations nor to enforce its view of the validity of the regulation beyond adjudicating a particular taxpayer appeal. Contact [Candace Axline](#) or [Geoffrey Way](#) with questions about [California Attorney General Opinion No. 23-701](#).

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