



This Week in State Tax (TWIST)

May 11, 2026



California: Differing opinions issued on taxability of remote work performed by a sole proprietor

In a recently released nonprecedential decision, the California Office of Tax Appeals (OTA) addressed the taxation of a Netherlands resident who provided construction-related consulting services for projects inside and outside California. The OTA found, and the taxpayer did not dispute, that the taxpayer was a nonresident carrying on a unitary business as a sole proprietor operating within and without California. The OTA based its determination on *Appeal of Bindley, Bindley* (2019-OTA-179P), in which it previously held that a taxpayer carried on a unitary business, trade, or profession within and without California when a taxpayer was self-employed, operated entirely outside of California, and had customers located in California. The OTA determined that the taxpayer was carrying on a business within and without California through the provision of services to California customers remotely, and thus his net income was subject to apportionment.

A subsequent California Court of Appeals ruling on a separate matter concerning the professional service income of a Texas-based radiologist effectively overturns the holding in the *Appeal of Bindley*. The taxpayer in the second matter resided in Texas and worked exclusively as an independent contractor for a single medical corporation. The taxpayer read imaging studies from his home in Texas for the corporation's hospitals and other medical facilities located in several states, including California. Over a three-year period covering 2018 through 2020, he earned more than \$300,000 annually from this teleradiology work. The taxpayer filed California nonresident returns on the instruction of the Franchise Tax Board (FTB) and paid the tax calculated. He then filed refund claims. The FTB did not act on the claims, and the taxpayer filed suit. A trial court summarily upheld the FTB position that the taxpayer operated a "unitary business" within and without California, meaning that California regulations required apportionment of his sole proprietorship income and allowed California to tax a portion of his total professional receipts.

The Court of Appeal reversed, holding that the FTB had not established that, as a matter of law, the taxpayer was conducting a "unitary business." The court reviewed California's unitary business jurisprudence and observed that those cases almost uniformly involve two or more commonly owned, functionally integrated business entities or operations. The fact patterns discussed in prior unitary determinations typically showed a flow of value, interdependence, and centralization of management between multiple business entities or business activities. The taxpayer in this case was a single individual performing one professional activity for a single customer. The court found no authority applying the corporate-style unitary business concept to a nonresident individual who merely performs a single line of work for one payor, even when the ultimate patients and medical facilities are in multiple states. The court rejected the FTB reliance on administrative decisions such as *Appeal of Bindley*, which it characterized as inapposite, nonbinding, or insufficient support for extending the unitary concept. The court

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emphasized that the cross-reference to UDITPA in the regulation on which FTB relied did not alter the fundamental requirement that there must be a “unitary business” within and without California before apportionment is applied. Because the FTB had not met its burden on the unitary business element, the court reversed the summary judgment in FTB’s favor and remanded. The court expressly declined to address whether the taxpayer’s income might nevertheless be taxable under some other sourcing theory or regulation not before the court.

Please contact [Candace Axline](#), [Geoffrey Way](#), and [Oksana Jaffe](#) with questions about [Matter of Suurs \(2026-OTA-238\)](#) and [Garcia-Rojas v. Franchise Tax Bd., Cal. Ct. App., 1st Dist., No. A172054 \(May 1, 2026\)](#).

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