



Officers, 2022-2023

Michael F. Carchia
Chair
Capital One Services, LLC

Mollie L. Miller
Vice Chair
*Fresenius Medical Care
North America*

Jamie S. Laiewski
Secretary & Treasurer
Charter Communications

Robert J. Tuinstra, Jr.
Immediate Past Chair
Corteva Agriscience

Arthur J. Parham, Jr.
Past Chair
Entergy Services, LLC

Amy Thomas Laub
Past Chair
Nationwide Insurance Company

Douglas L. Lindholm
President
Council On State Taxation

Directors

Madison J. Barnett
The Coca-Cola Company

C. Benjamin Bright
HCA Healthcare, Inc.

Lani J. Canniff
Ameriprise Financial, Inc.

Sandra K. Cary
LKQ Corporation

Susan Courson-Smith
Pfizer Inc.

Karen DiNuzzo-Wright
Walmart Inc.

Kurt A. Lamp
Amazon.Com

Jeffrey A. Langer
The Home Depot

Stephen J. LaRosa
Alexion Pharmaceuticals, Inc.

Toni Mincic
Lumen Technologies

John H. Paraskevas
Exxon Mobil Corporation

Michael R. Raley
VF Corporation

Patrick A. Shrake
Cargill, Incorporated

Kyle Snedaker
Conagra Brands, Inc.

Beth L. Sosidka
AT&T Services, Inc.

Archana Warner
*Constellation Energy
Corporation*

Emily T. Whittenburg
Nike, Inc.

Stephanie T. Do
Senior Tax Counsel
(202) 484-5228
sdo@cost.org

September 15, 2023

Mr. Karim Kentfield
Deputy Attorney General
California Department of Justice

Via E-mail

Re: The Office of Tax Appeals Should Have Jurisdiction to Overturn Tax Regulations

Dear Mr. Kentfield:

On behalf of the Council On State Taxation (COST), thank you for the opportunity to provide comments on the California Office of Tax Appeals' (OTA) legal authority and jurisdiction to invalidate and refuse to enforce provisions in the California Code of Regulations, promulgated by a different state agency and approved by the Office of Administrative Law. Limiting the OTA's authority and jurisdiction on regulatory issues is a significant historical departure that limits fair and broad access to the OTA.

About COST

COST is a nonprofit trade association consisting of over 500 multistate corporations engaged in interstate and international business. COST's objective is to preserve and promote equitable and nondiscriminatory state and local taxation of multijurisdictional business entities. COST has a significant number of members that own property, employ workers, make substantial sales, and are incorporated in California.

Reviewing Regulatory Disputes is Part of the OTA's Jurisdiction

The OTA "is the successor to, and is vested with, all of the duties, powers, and responsibilities of the State Board of Equalization necessary or appropriate to conduct appeals hearings." A.B. 102 (Cal. 2017). The State Board of Equalization (BOE) has historically not limited its jurisdiction over regulatory disputes, except disputes based on constitutional grounds (federal and/or State). *See In the Appeal of Save Mart Supermarkets & Subsidiary*, 2002-SBE-002 (Cal. Bd. of Equalization Feb. 6, 2002) (invalidating a tax regulation because it directly conflicted with a statute). Because the OTA is vested with the same authority as the BOE, there is no reason why the OTA should not have the same ability to hear similar regulatory disputes.

Limiting the OTA's jurisdictional powers also hampers taxpayers' access to a fair and independent tax tribunal, undermining the OTA's purpose. Unwarranted restrictions on the OTA's ability to address regulations that conflict with statutes or other regulations

inappropriately result in administrative deference in State tax matters. It prevents the OTA from exercising independent judgment in such a manner that can violate due process.

Thank you for your time and consideration. If you have any questions or would like to discuss these comments further, please do not hesitate to contact me.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Stephanie T. Do', is written over the typed name.

cc: COST Board of Directors
Douglas L. Lindholm, COST President & Executive Director