

## **Alert** | State & Local Tax (SALT)

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### **More Taxes in California's 2023-2024 Budget Plan; CA Supreme Court Declines to Review Sales Tax Case**

In California, spring flowers may bring tax dollars as state Senate Democrats **propose** increasing the corporate tax rate along with other changes and the California Supreme Court agreed with the Court of Appeal that the California Department of Tax and Fee Administration (CDTFA) has the discretion to decide who is a “retailer.”

#### **Proposed Corporate Tax Changes**

A group of California Senate Democrats proposed an increase to the California corporate income/franchise tax rate, from a historically flat 8.84%, to 10.99% for corporations with taxable income over \$1.5 million. Called the “Protect our Progress” plan, proponents’ stated goal includes, among other things, protecting recent “budget achievements from significant cuts.” It is, however, unclear from the proposal whether the threshold would be based on pre- or post-apportioned income and whether the proposal also would increase the rate for some banks and financial corporations, which are currently taxed at 10.84%, potentially raising the rate to 12.99%.

The proposal also would make the following changes to relieve the tax burden on small to mid-size businesses:

- Decrease the tax rate to 6.63% for corporations with less than \$1.5 million in taxable income; and
- Sunset the tax increase if the Trump-era tax cuts are repealed (presumably the tax decrease for small to mid-size businesses would stay at 6.63%).

The proposal also would provide for an automatic net operating loss (NOL) suspension (as California has manually done in the past) but would allow the entity to use the deferred NOL over a five-year period, even if the entity did not have a tax liability in the future year. Governor Gavin Newsom has publicly announced his opposition to this plan.

### ***Grosz v. California Dep't of Tax & Fee Admin.***

On April 26, 2023, the California Supreme Court declined to review the Court of Appeal's decision in *Grosz v. California Dep't of Tax & Fee Admin.*, which involved whether the CDTFA was required to collect sales and use taxes from internet retailers that sold products from third-party merchants. Under California Revenue and Taxation Code § 6015(a), the “retailer” (i.e., the party obligated to collect and remit sales and use taxes) may be the internet retailer or the third-party merchant. The California Supreme Court's denial of review leaves in place the Court of Appeal's decision that the CDTFA has the sole discretion to determine who the “retailer” is for purposes of collecting sales and use taxes.

### **Takeaways**

Although the Protect Our Progress plan's proposed corporate tax changes are similar to those proposed in the past, the 2023-24 version includes offsetting rate reductions for smaller taxpayers. Thus, while Governor Newsom generally has voiced opposition to tax increases, shifting the tax burden from small and medium-sized businesses to larger corporations may be more politically palatable for the governor as more details are ironed out.

The *Grosz* decision is interesting not for its substance but for the court's direction on administrative deference. While the substantive issue is moot after the enactment of California's Marketplace Facilitator Act, the Court of Appeal decision and California Supreme Court's denial of the petition for review is interesting because it illustrates the judiciary's deference to California's administrative agencies when it comes to interpreting tax law.

## **Author**

This GT Alert was prepared by:

- **Shail P. Shah** | +1 415.655.1300 | [Shail.Shah@gtlaw.com](mailto:Shail.Shah@gtlaw.com)

### **Greenberg Traurig's State and Local Tax (SALT) Team:**

#### **Arizona**

- **Jake B. Smith** | +1 602.445.8334 | [smithjake@gtlaw.com](mailto:smithjake@gtlaw.com)

#### **California**

- **Bradley R. Marsh** | +1 415.655.1252 | [Bradley.Marsh@gtlaw.com](mailto:Bradley.Marsh@gtlaw.com)
- **G. Michelle Ferreira** | +1 415.655.1305 | [ferreiram@gtlaw.com](mailto:ferreiram@gtlaw.com)
- **Colin W. Fraser** | +1 949.732.6663 | [frasercw@gtlaw.com](mailto:frasercw@gtlaw.com)
- **Courtney A. Hopley** | +1 415.655.1314 | [hopleyc@gtlaw.com](mailto:hopleyc@gtlaw.com)
- **Natalie Mackary** | +1 949.732.6540 | [mackaryn@gtlaw.com](mailto:mackaryn@gtlaw.com)
- **Cris K. O'Neill** | +1 949.732.6610 | [oneallc@gtlaw.com](mailto:oneallc@gtlaw.com)

- Shail P. Shah | +1 415.655.1300 | [Shail.Shah@gtlaw.com](mailto:Shail.Shah@gtlaw.com)
- Ruben Sislyan | +1 310.586.7765 | [sislyanr@gtlaw.com](mailto:sislyanr@gtlaw.com)
- James T. Smith | +1 415.590.5104 | [James.Smith@gtlaw.com](mailto:James.Smith@gtlaw.com)
- Jennifer A. Vincent | +1 415.655.1249 | [vincentj@gtlaw.com](mailto:vincentj@gtlaw.com)

#### **Colorado**

- Marc J. Musyl | +1 303.572.6585 | [musylm@gtlaw.com](mailto:musylm@gtlaw.com)
- Neil Oberfeld | +1 303.685.7414 | [oberfeldn@gtlaw.com](mailto:oberfeldn@gtlaw.com)
- Andrew P. Rubin | +1 303.572.6552 | [rubina@gtlaw.com](mailto:rubina@gtlaw.com)

#### **Delaware**

- Jonathan I. Lessner | +1 302.661.7363 | [lessnerj@gtlaw.com](mailto:lessnerj@gtlaw.com)

#### **Florida**

- Marvin A. Kirsner | +1 954.768.8224 | [kirsnerm@gtlaw.com](mailto:kirsnerm@gtlaw.com)
- Joel D. Maser | +1 954.765.0500 | [maserj@gtlaw.com](mailto:maserj@gtlaw.com)

#### **Illinois**

- Lawrence H. Brenman | +1 312.456.8437 | [brenmanl@gtlaw.com](mailto:brenmanl@gtlaw.com)

#### **Massachusetts**

- Brian Gaudet | +1 617.310.6000 | [gaudetb@gtlaw.com](mailto:gaudetb@gtlaw.com)
- James P. Redding | +1 617.310.6061 | [reddingj@gtlaw.com](mailto:reddingj@gtlaw.com)

#### **New Jersey**

- Martin L. Lepelstat | +1 973.443.3501 | [lepelstatm@gtlaw.com](mailto:lepelstatm@gtlaw.com)

#### **New York**

- Scott E. Fink | +1 212.801.6955 | [finks@gtlaw.com](mailto:finks@gtlaw.com)
- Barbara T. Kaplan | +1 212.801.9250 | [kaplanb@gtlaw.com](mailto:kaplanb@gtlaw.com)
- Glenn Newman | +1 212.801.3190 | [newmang@gtlaw.com](mailto:newmang@gtlaw.com)
- Shira Peleg | +1 212.801.6754 | [pelegs@gtlaw.com](mailto:pelegs@gtlaw.com)
- Ivy J. Lapidés | +1 212.801.9208 | [lapidesi@gtlaw.com](mailto:lapidesi@gtlaw.com)

#### **Northern Virginia**

- Richard J. Melnick | +1 703.903.7505 | [melnickr@gtlaw.com](mailto:melnickr@gtlaw.com)

#### **Oregon**

- Nikki E. Dobay | +1 916.868.0616 | [Nikki.Dobay@gtlaw.com](mailto:Nikki.Dobay@gtlaw.com)

#### **Texas**

- Josh Prywes | +1 214.665.3626 | [prywesj@gtlaw.com](mailto:prywesj@gtlaw.com)

**Washington, D.C.**

- **DeAndré R. Morrow** | +1 202.533.2317 | [morrowde@gtlaw.com](mailto:morrowde@gtlaw.com)

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