NO. _____, ORIG

In the Supreme Court of the United States

STATE OF ARIZONA
Plaintiff,

v.

STATE OF CALIFORNIA,
Defendant.

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT, BILL OF COMPLAINT, AND BRIEF IN SUPPORT

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MOTION FOR LEAVE TO FILE A BILL OF COMPLAINT

Pursuant to Supreme Court Rule 17, the State of Arizona requests leave of the Court to file a Complaint against the State of California challenging California's extraterritorial assessment and collection of taxes. This motion is accompanied by a complaint and supporting brief.

In support of its Motion, Arizona asserts that the claims as set forth in the Complaint allege grave violations of the U.S. Constitution, its claims are serious and dignified, and there is no alternative forum in which adequate and complete relief may be obtained. For the reasons more fully set forth in the accompanying Complaint and Brief in Support of Motion for Leave to File Complaint, Arizona's Motion for Leave to File a Complaint should be granted.

Respectfully submitted,

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BILL OF COMPLAINT

The State of Arizona brings this action against the State of California, and alleges as follows:

NATURE OF THE ACTION

1. This is a challenge to California's extraordinarily aggressive policy of extraterritorial tax assessment and enforcement, which tramples over state borders and flouts well-established constitutional precedents of this Court. California's actions violate the Due Process Clause of the Fourteenth Amendment (hereinafter, "Due Process Clause"), the Commerce Clause, and the Fourth Amendment. These constitutional violations inflict substantial harm on Arizona.

2. The tax at issue is a "doing business" tax assessed by California on all business entities that purportedly conduct business in that state. The tax

is either an $800 flat amount (for limited liability companies ("LLCs")) or $800 minimum (for corporations).

3. California is not content to assess the "doing business" tax solely against entities actually conducting business in California, however. Instead, California assesses the "doing business" tax so expansively that it reaches out-of-state companies that do not conduct *any* actual business in California, and indeed have no connection to the state except for purely passive investment in California companies (hereinafter, "Extraterritorial Assessments"). For example, as described below, California has made Extraterritorial Assessments against several Arizona-based companies that have no connection to California whatsoever except purely passive investment in an LLC doing business in California.

4. California's Extraterritorial Assessments violate the Due Process Clause, which imposes limitations on states' abilities to tax out-of-state persons that are equivalent to this Court's "minimum contacts" standard for asserting personal jurisdiction. *South Dakota v. Wayfair, Inc.*, 138 S.Ct. 2080, 2093 (2018). And this Court's decision in *Shaffer v. Heitner*, 433 U.S. 186 (1977), makes plain that passive investment in an out-of-state company does *not* satisfy the "minimum contacts" standard.

5. California's Extraterritorial Assessments similarly violate the Commerce Clause. This Court has imposed four independent Commerce Clause requirements for out-of-state taxation under its decision in *Complete Auto Transit, Inc. v. Brady*, 430

U.S. 274 (1977). California's Extraterritorial Assessments impressively manage to violate *all four*.

6. California's constitutional violations do not end with the Extraterritorial Assessments, however. If those assessments are not paid voluntarily, California dials its incursions into other states up to eleven.

7. Lacking personal jurisdiction over the out-of-state companies, California cannot employ its courts to enforce its Extraterritorial Assessments. And it is apparently unwilling to invoke the jurisdiction of courts in other states that actually do possess personal jurisdiction over the out-of-state companies.

8. Rather than employ any judicial process, California locates moneys in out-of-state bank accounts for the pertinent companies and simply sends the relevant banks ultimatums: transfer the funds to California or the state will extract the same amounts from the banks instead (hereinafter, "Seizure Orders," and where successful, "Extraterritorial Seizures"). The Seizure Orders are issued *ex parte*, without any warrant or the involvement of judicial officers, and expressly preclude banks from seeking judicial review. And California neither seeks the consent of the state from which the moneys are seized nor provides them notice.

9. These Seizure Orders—backed by the awesome force of the largest state economy in the United States, as well as California's aggressive regulatory leviathan—are remarkably successful in coercing banks to transfer their customers' moneys to California.

10. The Extraterritorial Seizures effectuated by these Seizure Orders violate the Due Process Clause for similar reasons as the Extraterritorial Assessments: California lacks personal jurisdiction over both the out-of-state businesses and the out-of-state funds.

11. California's Extraterritorial Seizures also violate the Fourth Amendment, since they (1) are issued without either a warrant or *any* other judicial involvement, and (2) are unreasonable seizures, particularly as they involve California exercising its sovereign power outside its territory—where it has no police power to effectuate extra-judicial seizures *at all* without the consent of the transgressed state.

12. California's Extraterritorial Assessments and Seizures cause grave harm to Arizona, inflicting distinct injuries that are of sovereign, proprietary, and quasi-sovereign natures. Indeed, California's constitutional violations give rise to *five* different forms of cognizable injury previously recognized by this Court.

13. "'[T]he seriousness and dignity of the claim[s]" presented in this Complaint are substantial, and warrant this Court's review. *Illinois v. City of Milwaukee*, 406 U.S. 91, 93 (1972).

14. No alternative forum is available for Arizona's claims. This Court's jurisdiction over disputes between states is exclusive, thereby preventing any other court from hearing this suit. Even if that were otherwise, federal district courts lack jurisdiction to award complete relief on the claims presented herein, and may lack jurisdiction entirely. California

state courts lack jurisdiction to consider Arizona's claims, because they may only hear refund actions and Arizona has not directly paid any "doing business" taxes to California itself (though its tax base diminishes every time an Arizona business pays that tax and deducts it from its Arizona taxable income).

15. Nor would refund actions in California state courts by individual companies provide an adequate alternative. Notably, requiring individual companies to file suit in California state courts—when the thrust of their challenge is that California can neither impose the "doing business" tax on them nor hale them into California state courts without violating due process—would effectively force those individuals to surrender their due process rights and acquiesce in California's exercise of jurisdiction over them as a precondition of adjudicating those due process rights. This Court has never viewed another forum as an "adequate" alternative where acquiescing in the constitutional violations being challenged is a prerequisite for filing suit. Nor can individual companies adequately vindicate the State's sovereign, proprietary, and quasi-sovereign interests, which can only be asserted directly by the State alone.

16. Moreover, the low-dollar amount of the $800 tax is an insufficient incentive for taxed entities to litigate these issues fully. Indeed, while it is likely that California engages in well over 100,000 Extraterritorial Assessments a year (with an estimated 13,000-plus in Arizona alone), and has done so for at least a decade, those Extraterritorial Assessments have only led to a single precedential decision in the California state courts. And that decision ducked the

constitutional arguments presented here and has been adroitly evaded by California, which has limited the adverse precedent to its precise facts (both material and immaterial). This Court is the sole forum that can effectively put an end to California's pervasive constitutional violations.

JURISDICTION AND VENUE

17. This Court has original and exclusive jurisdiction over this action because it is a "controvers[y] between two or more States" under Article III, § 2, cl. 2 of the U.S. Constitution and 28 U.S.C. § 1251(a).

18. This Court is the sole forum in which Arizona may enforce its rights under the U.S. Constitution. There is no alternative forum capable of fully resolving this dispute between Arizona and California. *See Mississippi v. Louisiana*, 506 U.S. 73, 77 (1992); *Wyoming v. Oklahoma*, 502 U.S. 437, 452 (1992).

PARTIES

19. The State of Arizona is a sovereign State of the United States. Arizona enjoys sovereignty within Arizona's borders, and its citizens enjoy all the rights, privileges, and immunities of our federal system of government as guaranteed under the U.S. Constitution and federal law.

20. Mark Brnovich is the duly elected Attorney General of Arizona. He is authorized under Arizona law to "[r]epresent the state in any action in a federal court[.]" A.R.S. § 41-193(A)(3).

21. Defendant the State of California is a sovereign State of the United States.

22. One of California's agencies, the California Franchise Tax Board ("Tax Board"), is responsible for the assessment, collection, and enforcement of all California tax statutes.

GENERAL ALLEGATIONS

Background on LLCs

23. Under California law, a limited liability company ("LLC") is a hybrid business entity formed under the California Corporations Code consisting of at least two members who own membership interests. *Kwok v. Transnation Title Ins. Co.*, 170 Cal. App. 4th 1562, 1571 (2009).

24. An LLC has a legal existence separate from its members. *Id.*

25. There are two types of LLCs: (1) member-managed, and (2) manager-managed. *People v. Pac. Landmark, LLC*, 129 Cal. App. 4th 1203, 1212 (2005).

26. In a member-managed LLC, all of the members actively participate in the management and control of the company. *Id.*

27. In a manager-managed LLC, however, one or more managers act as an agent of the LLC and manages all of the business and affairs of the company. *Id.* In such an LLC, the members do not play any role in management and operation. *Id.* Instead, they are simply passive investors.

28. "While LLC members [in a manager-managed LLC] have the ability to remove the manager with a

majority vote, they have no right to control the management and conduct of the LLC's activities, nor do they have the apparent authority to do so." *Swart Enterprises, Inc. v. Franchise Tax Bd.*, 7 Cal. App. 5th 497, 510 (2017).

29. Whether an LLC is member-managed or manager-managed, LLC members "are not personally liable for judgments, debts, obligations, or liabilities of the company 'solely by reason of being a member.'" *Pac. Landmark*, 129 Cal. App. 4th at 1212.

California "Doing Business" Tax

30. California imposes a flat, annual "doing business" tax of $800 on every LLC "doing business" in the state. Cal. Rev. & Tax. Code §17941(a); *id.* §23153(d)(1).

31. California similarly imposes a minimum "doing business" tax of $800 on every corporation "doing business" in the state. Cal. Rev. & Tax. Code §23151(a); *id.* §23153(d)(1). Corporations pay the greater amount of a percentage of their net income or $800, whichever is greater. *Id.* §§23151(a), 25153.

32. LLCs and corporations are deemed to be "doing business" in California if they are "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit." Cal. Rev. & Tax. Code §23101(a).

33. Section 23101(b) further explains that "a taxpayer is doing business in this state" if the taxpayer satisfies "any" of four conditions, including (1) being

domiciled in California, or exceeding any specified amounts in California for any of (2) gross "sales," (3) ownership of "real property and tangible personal property," or (4) paying "compensation." *Id.* §23101(b).

34. If a taxpayer meets any of these four conditions, they are deemed to be "doing business" in California and are subject to the "doing business" tax. LLCs meeting any one of these four conditions are referred hereinafter as "California-Operating LLCs."

Tax Board's Interpretation Of "Doing Business"

35. The Tax Board is the agency tasked with assessing and collecting taxes in California, including the "doing business" tax.

36. The Tax Board has adopted an aggressive enforcement policy with respect to the "doing business" tax, including an expansive interpretation of what constitutes "doing business" in California. That interpretation has been codified as Legal Ruling 2014-01, although the Tax Board's interpretation pre-dates that formal legal ruling.

37. Legal Ruling 2014-01 addresses the application of the "doing business" tax to LLCs that elect to be classified as a partnership for tax purposes and their members (attached hereto as Exhibit A).[1]

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[1] LLCs can alternatively elect to be treated as corporations for purposes of taxation. Because such an election ultimately may subject the earnings of the LLC to double taxation (much like standard corporations), such elections are disfavored and

Under that ruling, the Tax Board deems each member of a California-Operating LLC to be doing business in California itself, regardless of whether the California-Operating LLC is manager-managed or member-managed. *See* Ex. A, at 7-8, *available at* https://tinyurl.com/yc3zf28y.

38. Thus, under Legal Ruling 2014-01, members of a California-Operating LLC are subject to the "doing business" tax even if they do not "participate in the management of [the] LLC or appoint a manager[.]" *Id.*; *id.* at 17-18 (Situation 5).

39. Legal Ruling 2014-01 provides three other examples of business entities that are members of California-Operating LLCs that are subject to the "doing business" tax, despite lacking minimum contacts with California: Situations 3, 4 and 6. *Id.* at 13-17, 18-20. Legal Ruling 2014-01 thus explains four different times California's official policy that passive investment in a California-Operating LLC is a sufficient basis to assess the "doing business" tax against out-of-state businesses—*i.e.*, that Extraterritorial Assessment is the official policy of California and its Tax Board.

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relatively rare. Indeed, the ability to enjoy limited liability for its investors without being subjected to potential double taxation is one of the principal benefits of forming LLCs, which can be vitiated by electing corporate tax treatment. For these reasons, most LLCs elect to be treated as a partnership for purposes of taxation, rather than as a corporation.

This Complaint focuses on the Tax Board's policies with respect to taxation of LLCs electing partnership taxation treatment. But virtually all of the same arguments would apply equally to any Extraterritorial Assessments and Seizures against members of LLCs that elect corporate tax treatment.

40. Prior to 1996, the Tax Board had adopted similar reasoning with regard to partnerships, considering all partners—whether general or limited—to be doing business in California if the partnership conducted business in California. The Tax Board did so even though limited partners generally play no role in the management of partnerships.

41. California's Board of Equalization eventually overturned this reasoning, however, holding that limited partners "are [not] doing business here [in California] individually simply because they have interests as limited partners in limited partnerships which are engaged in business [in California.]" *See Appeals of Amman & Schmid Finanz AG, et al.*, 96-SBE-008, April 11, 1996 ("*Amman & Schmid*"), *available at* https://tinyurl.com/y9cmopbk.

42. Although *Amman & Schmid* held in 1996 that limited partners are not "doing business" in California based solely on their passive interests in California-operating partnerships, the Tax Board refused to apply the same logic to LLCs, and continued to assess "doing business" taxes to business entities based solely on their passive interests in manager-managed California-Operating LLCs.

43. For example, a 2008 publication of the Tax Board explained that "foreign LLCs that are members of an LLC doing business in California … are considered doing business in California." *See* Tax Board, *Limited Liability Company Tax Booklet* 5 (2008), *available at* https://tinyurl.com/ydb727ro.

44. The Tax Board's interpretation of "doing business" to reach passive investors in manager-

managed LLCs was codified by the Tax Board in 2014 in Legal Ruling 2014-01. *See* Ex. A.

Swart *and The Tax Board's Recalcitrance*

45. The Tax Board's policy was challenged in California state courts in *Swart Enterprises, Inc. v. Franchise Tax Board*, 7 Cal. App. 5th 497 (2017). In *Swart*, the Tax Board assessed the "doing business" tax against a non-California corporation whose only "business" in California was a "0.2 percent ownership interest in a manager-managed California limited liability company (LLC) investment fund," which "was established as a manager-managed LLC two years before Swart became an investor." *Id.* at 500, 512. Swart Enterprises challenged the tax assessment on both statutory and constitutional (Due Process Clause and Commerce Clause) grounds. *Id.* at 502.

46. The California Court of Appeal invalidated the Tax Board's assessments on statutory grounds and therefore did not reach Swart Enterprises' due process and Commerce Clause arguments. *Id.* at 513-14. The appellate court concluded that Swart Enterprises was "not doing business in California based solely on its minority ownership interest in [the] LLC" operating in California. *Id.* at 513. The Court of Appeal specifically criticized Legal Ruling 2014-01 and explained that it "disagree[d] with its analysis [and] note[d] it contradicts the position previously taken by the [Tax Board.]" *Id.* at 511. It further explained that the Tax Board's policy "defies a commonsense understanding of what it means to be 'doing business.'" *Id.* at 513.

47. The Tax Board decided not to seek California Supreme Court review of *Swart*. Instead, it announced in a formal notice (2017-01) that it would accept the *Swart* decision, but only in cases with essentially identical facts: the Tax Board thus announced that (1) it "will follow … *Swart* in situations *with the same facts*," (2) that "[t]o the extent taxpayers believe their situation has *the same facts* as in *Swart*, they should take that into consideration in determining if they … [should] file a claim for refund" and (3) "[i]n any claim for refund, taxpayers should cite the holding in *Swart* and explain how their factual situation is *the same as the facts* in *Swart*." *See* Complaint Ex. B, *available at* https://tinyurl.com/ya6krqyy (emphasis added).

48. Following Legal Notice 2017-01, the California Office of Tax Appeals rejected the Tax Board's narrow reading of *Swart* in *In the Matter of the Appeal of Satview Broadband, Ltd.*, OTA Case No. 18010756 (Sept. 25, 2018). But despite the California Court of Appeal's and the Office of Tax Appeals's rejections of the reasoning of Legal Ruling 2014-01 in *Swart* and *Satview*, respectively, the Tax Board has not withdrawn that ruling. Instead, it eventually released Legal Ruling 2018-01 (attached hereto as Exhibit C). That ruling largely reiterated the prior interpretation of Legal Ruling 2014-01 and recognized only a "*narrow exception*" from *Swart* that "*may* apply in *limited circumstances*," and makes modest changes to one of the examples (which does not change the outcome). Ex. C at 1-3 (emphasis added). It otherwise leaves its original Legal Ruling 2014-01 intact, and ignores *Satview* entirely.

49. The Tax Board has also created a new form letter for rejecting refund requests based upon *Swart* and/or the legal arguments raised in it. Examples of the Tax Board using that form letter to deny refund claims by Arizona LLCs are attached as Exhibits D and E.

50. The Tax Board's post-*Swart* form letter identifies three critical facts from *Swart*: "[(1)] The only connection with California was 0.2 percent membership interest in an LLC that was doing business in California. [(2)] The California LLC was manager-managed. [(3)] The original members of the California LLC made the decision to delegate their authority to a manager before Swart Enterprises, Inc. acquired its membership interest in the California LLC." Exs. D and E. The letter provides a check box for denying a refund application on the basis that "You did not meet one or more of the above facts as per the Swart decision." *Id.*

51. The Tax Board's form letter thus makes clear that failure to satisfy all three factual circumstances that were present in *Swart* will result in a denial of a refund request for Extraterritorial Assessments.

Tax Board's Seizure Authority

52. If the Tax Board's Extraterritorial Assessments are not paid voluntarily by out-of-state businesses, the Tax Board assesses a penalty and then seeks collection through other means.

53. The Tax Board typically does not utilize California state courts to collect Extraterritorial Assessments. Instead, the Tax Board relies on special

authority conferred on it by California statutory law, which allows it to effectuate seizures based on simple notice.

54. California law permits the Tax Board to issue "notice[s], served personally or by first-class mail" that "require any employer [or] person" to "withhold … the amount of any tax, interest, or penalties due from the taxpayer … [and] transmit the amount withheld to the Franchise Tax Board" (*i.e.*, "Seizure Orders"). Cal. Rev. & Tax. Code §18670(a). The provision requires, if necessary, the recipient of the Seizure Order to "liquidate the financial asset [in the account] in a commercially reasonable manner within 90 days of the issuance of the order to withhold." *Id.* §18670(c).

55. If the bank or other recipient of a Seizure Order does not comply with the order and transfer the funds, the bank or other recipient "shall be liable for those amounts" to California. *Id.* §18670(d).

56. The Tax Board may also serve by "electronic transmission or other electronic technology" similar Seizure Orders on "any depository institution." *Id.* §18670.5(a). Such notices may be issued by the Tax Board "in its sole discretion" whenever it "has reason to believe [a bank] may have in its possession, or under its control, any credits or other personal property or other things of value, belonging to a taxpayer" that, in the Tax Board's view, owes any "tax, interest or penalties." *Id.*

57. California expressly precludes recipients of Seizure Orders from challenging the orders in court. Instead, California law mandates that the recipients

"shall comply with the [Seizure Order] without resort to any legal or equitable action in a court of law or equity." *Id.* §18674(a).

58. California law does not require the Tax Board to obtain any judicial approval of its Seizure Orders, either from a judge or magistrate. *Id.* §§18670, 18670.5, 18674. California law also does not require any finding of probable cause before the Tax Board may issue a Seizure Order. Instead, the Tax Board may issue Seizure Orders electronically "in its sole discretion." *Id.* §18670.5(a).

59. Nothing in Sections 18670 and 18670.5 limit the Tax Board's authority to issue Seizure Orders only to in-state recipients. Nor do those sections limit seizures only to monies and properties that are located in California.

60. California can and does issue Seizure Orders to multi-state banks requiring that they transfer moneys from out-of-state accounts (*i.e.*, Extraterritorial Seizures).

61. Upon information and belief, California issues thousands of Seizure Orders every year for property located in other states, including moneys held in out-of-state bank accounts.

EXTRATERRITORIAL ASSESSMENTS AND SEIZURES IN ARIZONA

62. The Tax Board has effectuated both Extraterritorial Assessments and Seizures in Arizona. Those Extraterritorial Assessments and Seizures directly injure Arizona's interests and provide Article III

standing for the instant action. *See also infra* ¶¶129-41.

63. The "doing business" tax is typically paid by LLCs by first filing a "Form 568" with the Tax Board. One accounting firm in Arizona prepared 160 Form 568s for Arizona-based LLCs in the prior year. The firm estimated that roughly half (or 80) of those Form 568s were prepared solely because of passive investments in LLCs doing business in California (and not based on the Arizona-based LLC itself conducting business in California).

64. That accounting firm has approximately 60 active certified public accountants ("CPAs") in Arizona, or roughly 0.6% of the roughly 10,000 registered and active CPAs in Arizona.

65. Extrapolating from that 0.6% market share of active CPAs, there are an estimated 13,333 Arizona-based LLCs subject to the California "doing business" tax based solely on passive investments in California-Operating LLCs, who pay an estimated $10,666,400 in "doing business" taxes to California annually.

66. Payment of those "doing business" taxes to California is generally a deductible business expense under Arizona law, which reduces the taxes that the Arizona-based LLCs would otherwise pay to the Arizona treasury. Assuming those LLCs' incomes are being distributed to Arizona taxpayers in Arizona's top income tax bracket (4.54%), California's Extraterritorial Assessments cost Arizona $484,254.56 in lost revenue each year.

67. The State of Arizona is also aware of specific Extraterritorial Assessments and Seizures against Arizona businesses. Innutra, LLC ("Innutra") is a manager-managed LLC organized under Arizona law that conducted actual business in California in tax years 2012-14. The Tax Board assessed, and Innutra paid, the $800 "doing business" tax for each of those years, which is not challenged here. The Tax Board further assessed the "doing business" tax on LLCs that were mere passive investors in Innutra, however, which is precisely the sort of Extraterritorial Assessment that is challenged here.

68. Innutra is comprised of two classes of members: (1) "Series A" members, who are voting members and who have authority to appoint and replace the manager of Innutra; and (2) "Series A-1" members, who lack voting rights. Because Innutra is a manager-managed LLC, neither the Series A nor the Series A-1 members play any role in the management of Innutra; instead, their investments are purely passive in nature.

69. Three LLCs organized under Arizona law have invested in Innutra: PWS5 LLC ("PWS5"), KWC Holdings LLC ("KWC"), and Guardian Eagle Investments LLC ("Guardian Eagle").

70. Two LLCs organized under Delaware law, but whose sole members are Arizona residents, have also invested in Innutra: RES Buckeye Enterprises LLC ("RES Buckeye") and Kellynn IT LLC ("Kellynn IT").

71. PWS5 is a Series A member with a 10% ownership interest in Innutra. KWC, RES Buckeye, Kellynn IT, and Guardian Eagle are all Series A-1

members with ownership interests of 10%, 5%, 2.5% and 2.5%, respectively.

72. California has assessed "doing business" taxes against all five of these LLCs.

PWS5

73. PWS5 is a limited liability company organized under Arizona law.

74. PWS5 has a 10% ownership interest in Innutra.

75. Although PWS5 is a Series A member with voting rights, it plays no role in the management of Innutra; instead, it is a passive investor.

76. California has assessed its "doing business" tax on PWS5 for tax years 2013 and 2014 based on its investment in Innutra.

77. On May 15, 2015, the Tax Board sent PWS5 a "Demand for Tax Return." *See* Ex. F. Filing such a tax return would necessarily require PWS5 to pay the "doing business" tax. In its demand, the Tax Board stated that it had "received information from INNUTRA LLC that your business entity is a … member of a limited liability company." *Id.* at 2.

78. The Tax Board next sent PWS5 a "Notice of Proposed Assessment" on October 30, 2015, which assessed the $800 "doing business" tax, along with a $200 "Demand penalty," $432 "Late filing penalty," $79 "Filing enforcement fee," and $63.40 in interest, for a "Total Tax, Penalties, Interest and Fees" of $1574.40. *See* Ex. G.

79. California then sent PWS5 a "Notice of Balance Due," *see* Ex. H, followed by a notice threatening further action related to the allegedly due 2013 tax liability: "This is your final notice before levy. If you do not pay this balance immediately, we can begin collection actions without further notice to you," s*ee* Ex. I.

80. California subsequently issued another "Demand for Tax Return" and assessed $1573.80 in "doing business" taxes, fees, penalties and interest for tax year 2014. *See* Exs. J and K.

81. California continued its collection efforts by sending PWS5 a "Notice of Balance Due," "Notice of State Tax Lien," and "LLC Pre-Levy Notice" for both tax years 2013 and 2014. *See* Exs. L, M, and N.

82. When PWS5 did not pay California's Extraterritorial Assessments, the Tax Board did not attempt to seek recovery of the purported deficiencies in any California state, Arizona state, or federal court.

83. Instead, the Tax Board issued Seizure Orders to Wells Fargo on December 7, 2016, February 23, 2017, July 21, 2017, and March 9, 2018 for $1,889.89, $3,493.53, $3,588.76 and $3,669.47, respectively. *See* Ex. O.

84. In each case, the Seizure Orders were sent to an Arizona address and sought seizures of moneys held in Arizona bank accounts. Because of insufficient funds in the account, only $50 was ultimately transferred to the Tax Board.

85. Each time that Wells Fargo received a Seizure Order, it charged PWS5 a $125 fee.

86. The Tax Board continues to assess interest and penalties against PWS5, and the amount of California's Extraterritorial Assessments grows continuously. A June 6, 2018 notice from the Tax Board sought a total of $3,651.20 from PWS5. *See* Ex. P.

KWC

87. KWC is a limited liability company organized under Arizona law.

88. KWC has a 10% ownership interest in Innutra.

89. As a Series A-1 member of Innutra, KWC plays no role in the management of Innutra and has no ability to appoint or replace its manager. Its role is thus entirely passive.

90. Apart from KWC's passive investment in Innutra, KWC does not have any contacts in California. KWC possesses no property in California, has no employees in California, and (unsurprisingly for a holding company) neither sells products nor advertises in California.

91. California has assessed its "doing business" tax on KWC for tax year 2013 based on its investment in Innutra.

92. KWC ignored the Extraterritorial Assessment because it believed that it was not subject to the Tax

Board's jurisdiction and the assessment was unconstitutional.

93. The Tax Board subsequently issued a Seizure Order to Wells Fargo on August 29, 2016, for the amount of $1,878.15 (an $800 "doing business" tax plus penalties, fees and interest). *See* Ex. Q.

94. The Seizure Order was issued to a Wells Fargo location in Arizona, regarding KWC's bank account that was opened and maintained in Arizona.

95. The Seizure Order stated that Wells Fargo is "required to deduct and withhold" $1,878.15 from KWC's bank account and remit the amount after 10 days. *See* Ex. Q.

96. The Seizure Order threatened Wells Fargo if it did not accede to California's demand: "FAILURE TO WITHHOLD and remit the amount due may make you liable for the amount due." *See* Ex. Q.

97. The Seizure Order also alleged that it would insulate Wells Fargo from liability if Wells Fargo remitted payment: "YOU ARE NOT LIABLE to the taxpayer for any amounts that you are required to withhold and pay to this department." *See* Ex. Q.

98. The Seizure Order was not the product of any judicial hearing or issued by a neutral magistrate; nor did California obtain a warrant to seize the contents of KWC's bank account.

99. Wells Fargo acquiesced to the Seizure Order; it withheld and ultimately remitted the amounts sought to the Tax Board. It charged KWC a $125 fee for processing the Seizure Order. *See* Ex. R at 14.

100. California then issued a "Notice of Proposed Assessment" for tax year 2014 on September 23, 2016. Ex. R at 15-17.

101. On November 17, 2016, KWC filed a refund claim with the Tax Board for the amounts remitted by Wells Fargo, and to request that the Tax Board refrain from taking further action on the tax allegedly due from 2014. *See* Ex. R.

102. That refund claim explained that KWC "ha[d] no rights to appoint or remove any manager," "was not involved in the daily operations of Innutra,"and owned only a 10% interest in Innutra. Ex. R at 3-6.

103. The Tax Board denied KWC's refund on August 23, 2018, in a form letter. *See* Ex. E. The Tax Board's denial checked a box on the form that "You did not meet one or more of the above facts as per the Swart decision." *Id.*

104. KWC has appealed the Tax Board's denial of its refund claim to the Tax Board's Office of Tax Appeals.

Guardian Eagle

105. Guardian Eagle is a limited liability company organized under Arizona law.

106. Guardian Eagle has a 2.5% ownership interest in Innutra.

107. As a Class A-1 member of Innutra, Guardian Eagle plays no role in the management of Innutra and has no ability to appoint or replace its manager. Its role is thus entirely passive.

108. The Tax Board assessed an $800 "doing business" tax against Guardian Eagle for tax year 2013. Ex. D.

109. When Guardian Eagle did not pay that Extraterritorial Assessment, the Tax Board issued Seizure Orders to Wells Fargo, and successfully obtained funds from Guardian Eagle's Arizona-based bank accounts.

110. Guardian Eagle was thus subjected to both an Extraterritorial Assessment and Extraterritorial Seizure.

111. Guardian Eagle filed a refund claim with the Tax Board for the amounts assessed and seized. *Id.*

112. That refund claim was denied on August 23, 2018. *Id.* The refund claim denial stated that Guardian Eagle's "claim for refund did not meet one or more of the above [three] facts as per the Swart decision." *Id.* at 2.

113. One of those three facts was whether Innutra was "manager-managed." *Id.* at 2. Innutra was manager-managed, so this requirement was satisfied.

114. The Tax Board's refund denial was thus presumably on the basis that Guardian Eagle owned more than a "0.2 percent membership interest in an LLC that was doing business in California" and that Guardian Eagle was one of the "original members of the California LLC [that] made the decision to delegate their [management] authority to a manager." *Id.* at 1-2.

115. Guardian Eagle has appealed the Tax Board's denial of its refund claim to the Tax Board's Office of Tax Appeals.

RES Buckeye and KellynnIT

116. Both RES Buckeye and KellynnIT are limited liability companies organized under Delaware law, whose sole members are Arizona residents.

117. RES Buckeye and KellynnIT have 5% and 2.5% ownership interests in Innutra, respectively.

118. The Tax Board made Extraterritorial Assessments against both RES Buckeye and KellynnIT.

OTHER EXTRATERRITORIAL ACTIONS BY CALIFORNIA

119. California's unlawful invasions of the sovereign rights and territories of her sister states described above are no aberrations. Instead, as the most populous state in the union with the largest economy, California has enormous weight to throw around—and frequently does so at the expense of her sister states.

120. In 2016, for example, this Court considered an action arising from California's extraordinary extraterritorial actions in Nevada. *See generally Franchise Tax Bd. of California v. Hyatt*, 136 S.Ct. 1277 (2016). In *Hyatt* this Court observed that Board employees conducted an audit across state lines in Nevada, which included "rifling through [the taxpayer's] private mail, combing through his garbage, and examining private activities at his place of worship." *Id.* at 1280.

121. Chief Justice Roberts similarly noted the allegations that Tax Board agents "peered through Hyatt's windows, rummaged around in his garbage, contacted his estranged family members, and shared his personal information not only with newspapers but also with his business contacts and even his place of worship." *Id.* at 1284 (Roberts, C.J., dissenting). Moreover, "one employee in particular had it in for him, referring to him in antisemitic terms and taking 'trophy-like pictures' in front of his home after the audit." *Id.*

122. The conduct by California in the *Hyatt* case was sufficiently egregious that a jury awarded Hyatt "$1 million for fraud, $52 million for invasion of privacy, $85 million for emotional distress, and $250 million in punitive damages." *Id.* at 1285.

123. California similarly has engaged in extensive regulation of agricultural activities conducted in *other* states, which has led to 13 states filing an original action in this Court. *See generally Missouri v. California*, No. 148, Orig. (U.S. filed March 20, 2018).

124. *Missouri v. California* involved California's attempts to regulate the production methods for eggs in other states.

125. As part of its extraterritorial regulation of egg production, California has authorized its agricultural inspectors to enter into other states and investigate compliance with California's egg-production standards. California thus mandates that any egg producer intending to sell eggs in California permit "[i]nspection of Pastures, fields, equipment, and

structures where shell eggs or egg products may be produced, processed, handled, stored or transported, including the inspection of the enclosure area for egg laying hens." Cal. Code Regs. tit. 3, § 1358.4. The regulations are not limited to sites in California. *See id.*; *see also* Reply Brief at 6, *Missouri v. California*, No. 148, Orig. (U.S. March 20, 2018).

126. California does not seek the consent of the forum state before dispatching its inspectors into their territory. Nor does California seek warrants from the forum states' courts (or California's own courts) before conducting its extraterritorial searches.

127. California's regulations penalize non-compliance with its warrantless, extraterritorial inspection demands severely: authorizing fines of up to $10,000. *See* Cal. Code Regs. tit. 3, 1358.6.

128. California has similarly demonstrated a willingness to exercise personal jurisdiction in violation of this Court's due process precedents. Most recently, this Court reversed California's reliance on "a loose and spurious form of general jurisdiction," determining that California violated due process where the "relevant plaintiffs [we]re not California residents and d[id] not claim to have suffered harm in that State." *Bristol-Myers Squibb Co. v. Superior Court*, 137 S.Ct. 1773, 1781-82 (2017).

INJURIES TO ARIZONA'S INTERESTS

129. California's Extraterritorial Assessments and Seizures gravely injure Arizona's sovereign, proprie-

tary, and quasi-sovereign interests and thereby inflict cognizable Article III injury.

- *Sovereign Injuries*

130. California's actions inflict two distinct types of sovereign injury to Arizona, both of which support Arizona's standing to bring this action.

131. *First*, California's incursions into Arizona's sovereign territory violate Arizona's "sovereign interests" in "maintenance and recognition of [its] borders." *Alfred L. Snapp & Son, Inc. v. Puerto Rico ("Snapp")*, 458 U.S. 592, 601 (1982). By effectively treating Arizona's territory as its own in exercising taxing and police powers, California has infringed upon Arizona's sovereignty. *See*, *e.g.*, *United States v. Louisiana.*, 363 U.S. 1, 33 (1960) ("A land boundary between two States is an easily understood concept. It marks the place where the full sovereignty of one State ends and that of the other begins.")

132. *Second*, California's actions frustrate Arizona's ability to "exercise … sovereign power over individuals and entities within" its borders, thereby further injuring Arizona's sovereign interests. *Snapp*, 458 U.S. at 601; *see also Department of Taxation and Finance of New York v. Milhelm Attea & Bros., Inc.*, 512 U.S. 61, 73 (1994) (noting that States generally have "plenary power ... over residents within their borders[.]").

133. Arizona law regulates banks located in its borders—including by providing proper protection of in-state deposits that belong to Arizona's residents. *See generally* A.R.S. tit. 6 (Banks and Financial

Institutions). But Arizona's appropriate exercise of its sovereign power in regulating banks is substantially thwarted by California's unilateral seizure of funds located in Arizona-based accounts.

- *Proprietary Injuries*

134. California's actions also inflict proprietary harm to Arizona's treasury by converting otherwise-taxable income into non-taxable deductions. As discussed above, Arizona estimates that California's Extraterritorial Assessments cost it approximately $484,000 per year in lost tax revenue. *See supra* at ¶66.

135. This Court specifically held that loss of tax revenue is cognizable proprietary injury that permits a state to maintain an original action against another state asserting violations of the Commerce Clause. *See Wyoming v. Oklahoma*, 502 U.S. 437, 447 (1992).

- *Quasi-Sovereign Injuries*

136. California's Extraterritorial Assessments and Seizures also inflict two types of quasi-sovereign injury to Arizona.

137. *First*, California's constitutional violations injure Arizona's "quasi-sovereign interest in not being discriminatorily denied its rightful status within the federal system," as well as its related "interest, independent of the benefits that might accrue to any particular individual, in assuring that the benefits of the federal system are not denied to its general population." *Snapp*, 458 U.S. at 607, 608. This Court has thus recognized that each state has a

quasi-sovereign interest in "ensuring that the State and its residents are not excluded from the benefits that are to flow from participation in the federal system."

138. In *Snapp*, this Court recognized a "state interest in securing residents from the harmful effects of discrimination," which supported Puerto Rico's standing to bring suit to challenge that discrimination. *Id.* at 609. California's Extraterritorial Assessments discriminate against out-of-state companies, including Arizona-based companies, in favor of California-Operating companies, by charging them a marginal $800-minimum tax for the privilege of investing in California-Operating LLCs (which other California-Operating business do not face, since they have already paid the "doing business" tax).

139. Just as in *Snapp*, Arizona "need not wait for the Federal Government to vindicate the State's interest in the removal of barriers to the participation by its residents in the free flow of interstate commerce." 458 U.S. at 607. Similarly, the right to invest in the capital markets of all 50 states is one of the "benefits that are to flow from participation in the federal system." *Id.* at 608. Arizona has a quasi-sovereign interest in ensuring that benefit accrues to its citizens, which California's Extraterritorial Assessments contravene.

140. Similarly, by directly exercising its sovereign taxing and police powers in Arizona without following any of the constitutional methods for doing so (*e.g.*, obtaining a judgment from a court with personal jurisdiction to which full faith and credit would attach), California has denied Arizona its "rightful

status within the federal system." The Constitution protects Arizona's sovereignty by imposing limitations on how California can exercise its sovereign power in other states—such as requiring the existence of a judgment of a court that possessed personal jurisdiction over the person at issue for full faith and credit to apply. California's violation of those limitations inflicts cognizable and serious injury to Arizona.

141. *Second*, California's actions directly implicate Arizona's "quasi-sovereign interest in the health and well-being—both physical and economic—of its residents in general." *Snapp*, 458 U.S. at 607. By wrongfully seizing moneys that rightfully belong to its citizens—to the tune of about $10 million per year, *supra* ¶65—and violating their Fourth and Fourteenth Amendment rights, California's actions deeply frustrate Arizona's ability to protect her citizens well-being.

COUNT I: DUE PROCESS – EXTRATERRITORIAL ASSESSMENTS

142. Arizona repeats and re-alleges the allegations of paragraphs 1-141, above, as if fully set forth herein.

143. California has made Extraterritorial Assessments against Arizona businesses.

144. California's Extraterritorial Assessments violate the Due Process Clause of the Fourteenth Amendment.

145. The Due Process Clause demands "some minimum connection" between "a state and the person, property or transaction it seeks to tax." *Miller Brothers Co. v. Maryland*, 347 U.S. 340, 344-345 (1954).

146. The test for whether a state may impose a tax consistent with the Due Process Clause closely tracks this Court's "minimum contacts" standard for personal jurisdiction. *See*, *e.g.*, *South Dakota v. Wayfair, Inc.*, 138 S.Ct. 2080, 2093 (2018).

147. Passive investment in a corporation or LLC, without more, is insufficient to satisfy the "minimum contacts" standard. *See Shaffer v. Heitner*, 433 U.S. 186 (1977). Although *Shaffer* involved investment in a corporation, federal courts have broadly extended the same rule to LLCs. *See*, *e.g.*, *Lopes v. JetsetDC, LLC*, 994 F. Supp. 2d 135, 146 (D.D.C. 2014) ("Generally, courts do not have 'jurisdiction over individual officers and employees of a corporation just because the court has jurisdiction over the corporation.'... This rule applies to LLCs."); V-*E2, LLC v. Callbutton, LLC*, No. 10-538, 2012 WL 6108245, at *3 (W.D.N.C. Dec. 10, 2012) ("[M]embership in an LLC is not sufficient in-and-of itself to confer personal jurisdiction over its members."); *Compass Financial Partners, L.L.C. v. Unlimited Holdings, Inc.*, No. CV 07–1964–PHX–MHM, 2008 WL 2945585, at *4 (D. Ariz. July 28, 2008) ("[T]he fact that Defendant is a member of a limited liability company that owns property in Arizona is not sufficient in itself to subject Defendant to personal jurisdiction."); *MMK Group, LLC v. SheShells Co., LLC*, 591 F. Supp. 2d 944 (N.D. Ohio 2008) (same); *Mountain Funding, LLC v. Blackwater Crossing, LLC*, No. 05-513, 2006

WL 1582403, at *2 (W.D.N.C. June 5, 2006) (same); *Graymore, LLC v. Gray*, No. 06-638, 2007 WL 1059004, at *8 (D. Colo. Apr. 6, 2007) (same); *Wachovia Sec., LLC v. NOLA, LLC*, 248 F.R.D. 544, 547 (N.D. Ill. 2008) (same); *Apex Energy Group LLC v. Schweihs*, No. 15-438, 2015 WL 5613375, at *4 (S.D. Ind. Sept. 23, 2015) (same).

148. Passive investment in a corporation or LLC therefore does not provide a sufficient basis for a state to exercise its taxing power consistent with the Due Process Clause.

149. "Where there is jurisdiction neither as to person nor property, the imposition of a tax [is] ultra vires and void." *Miller Bros. Co. v. Maryland*, 347 U.S. 340, 342 (1954) (quoting *City of St. Louis v. Wiggins Ferry Co.*, 78 U.S. 423, 430 (1870)); *see also Frick v. Pennsylvania*, 268 U.S. 473, 496 (1925) (invalidating Pennsylvania statute that taxed the transfer of tangible personal property located in other states, as "contraven[ing] the due process of law clause of the Fourteenth Amendment").

150. California's Extraterritorial Assessments[2] assess taxes on out-of-state businesses based purely on passive investments in California-Operating LLCs. They accordingly violate the Due Process Clause of the Fourteenth Amendment.

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2 This Complaint challenges Extraterritorial Assessments of the "doing business" tax on all business entities, including LLCs and corporations.

COUNT II: COMMERCE CLAUSE – EXTRATERRITORIAL ASSESSMENTS

151. Arizona repeats and re-alleges the allegations of paragraphs 1-150, above, as if fully set forth herein.

152. California has made Extraterritorial Assessments against Arizona businesses.

153. California's Extraterritorial Assessment violates the Commerce Clause.

154. The Commerce Clause includes a "negative" aspect "that denies the States the power unjustifiably to discriminate against or burden the interstate flow of articles of commerce." *Oregon Waste Sys., Inc. v. Dep't of Envtl. Quality of State of Oregon*, 511 U.S. 93, 98 (1994).

155. The Commerce Clause restricts the authority of states to assess taxes against out-of-state companies. A tax violates the Commerce Clause if it fails any of the four requirements established by *Complete Auto Transit, Inc. v. Brady*. 430 U.S. 274 (1977). *See Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 179 (1995) (*Complete Auto* test is "established test for the constitutionality of a state tax on interstate commerce").

156. The *Complete Auto* test requires that taxes on out-of-state companies must be (1) "applied to an activity with a substantial nexus with the taxing State"; (2) "fairly apportioned"; (3) nondiscriminatory, *i.e.*, it "does not discriminate against interstate commerce"; and (4) "fairly related to the

services provided by the State." *Complete Auto*, 430 U.S. at 279.

157. *Complete Auto*'s first requirement closely tracks the Due Process Clause standard that there must be "'some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax[.]" *Wayfair*, 138 S.Ct. at 2093.

158. Mere passive ownership in a California-Operating LLC, without more, is insufficient to satisfy the "substantial nexus" prong of the *Complete Auto* test for essentially the same reasons that it is insufficient to satisfy the "minimum contacts" standard for the Due Process Clause. *See also Norfolk & W. Ry. Co. v. Missouri State Tax Commission*, 390 U.S. 317, 325 (1968) ("The taxation of property not located in the taxing State is constitutionally invalid, both because it imposes an illegitimate restraint on interstate commerce and because it denies to the taxpayer the process that is his due.").

159. California's Extraterritorial Assessments, which assess taxes on out-of-state businesses based purely on passive investments in California-Operating LLCs, therefore violate *Complete Auto*'s first requirement.

160. A tax is "fairly apportioned" under *Complete Auto*'s second test if the tax is "internally consistent" and "externally consistent." *See Jefferson Lines*, 514 U.S. at 185.

161. A tax is "internally consisten[t]," when, "if applied by every jurisdiction, there would be no

impermissible interference with free trade." *American Trucking Associations, Inc. v. Scheiner*, 483 U.S. 266, 284 (1987) (quoting *Armco Inc. v. Hardesty*, 467 US 638, 644).

162. If California's Extraterritorial Assessments were copied by every other state, those taxes would enormously dampen cross-border investments. Those taxes would effectively serve as first-entry tolls on access to the capital markets of any state.

163. California's Extraterritorial Assessments thus violate *Complete Auto*'s "fairly apportioned" requirement.

164. Under *Complete Auto*'s third requirement, a tax "discriminate[s] against … interstate commerce" if the tax "impos[es] a heavier tax burden on out-of-state businesses that compete in an interstate market than it imposes on its own residents who also engage in commerce among States." *Scheiner*, 483 U.S. at 282.

165. California's Extraterritorial Assessments do just that. They effectively impose a marginal tax on out-of-state businesses investing in California-Operating LLCs that California-Operating businesses do not themselves face, and thus violate *Complete Auto*'s third requirement.

166. *Complete Auto*'s fourth requirement mandates that a tax be "fairly related to the services provided by the State." *Jefferson Lines, Inc.*, 514 U.S. at 197.

167. California's Extraterritorial Assessments, however, are not accompanied by any corresponding

benefit to the taxed out-of-state entity. Unlike the California-Operating LLCs that they invest in, the out-of-state businesses do not receive any "police and fire protection," *see Jefferson Lines, Inc.*, 514 U.S. at 200, (since their only connection to California is their intangible investment). Instead, the only "benefit" being provided is California not slamming the doors of its capital markets shut to out-of-state investors—an action California could not constitutionally take. And refraining from unconstitutional conduct is not a "benefit" for which California can reasonably demand compensation.

168. California's Extraterritorial Assessments thus violate *Complete Auto*'s fourth requirement.

COUNT III: DUE PROCESS – EXTRATERRITORIAL SEIZURES

169. Arizona repeats and re-alleges the allegations of paragraphs 1-168, above, as if fully set forth herein.

170.It is well-established that "bank deposits … have situs at the domicile of the creditor[.]" *Baldwin v. Missouri*, 281 U.S. 586, 591 (1930). Bank accounts/deposits belonging to LLCs organized under Arizona law are therefore located in Arizona for purposes of jurisdiction and taxation. *See also* 59 A.L.R. 1046 ("[A] general deposit to the credit of a resident or of a domestic corporation, in a bank located in another state, has a situs for the purposes of property taxation in the state where the depositor is domiciled.").

171. California has effectuated Extraterritorial Seizures against Arizona businesses and thereby seized funds rightfully belonging to those businesses, which were located in Arizona-based accounts.

172. California's Extraterritorial Seizures violate the Due Process Clause of the Fourteenth Amendment.

173. The "seizure of property by [a] State under pretext of taxation when there is no jurisdiction or power to tax is simple confiscation and a denial of due process of law." *Miller Bros.*, 347 U.S. at 342.

174. California's Extraterritorial Seizures violate the Due Process Clause by seizing the Arizona-based funds where (1) California does not have personal jurisdiction over the out-of-state company that owns the funds, (2) California does not have *in rem* jurisdiction over the funds (since they are located out of state), and (3) California cannot exercise *quasi-in-rem* jurisdiction that might effectuate/legitimate the seizures.

175. As set forth above, passive investment in a California-Operating LLC fails to establish the requisite "minimum contacts" necessary for California to exercise personal jurisdiction. *See supra* ¶¶142-50.

176. California cannot exercise *in rem* jurisdiction over funds located in other states. *See*, *e.g.*, *Overby v. Gordon*, 177 U.S. 214, 222 (1900) ("It is repugnant to every idea of a proceeding *in rem* to act against a thing which is not in the power of the sovereign[.]").

177. Nor can California exercise *quasi-in-rem* personal jurisdiction in a manner that could constitutionally effectuate the Extraterritorial Seizures. Where a State proceeds *quasi in rem*, the same "minimum contacts" that are required for an *in personam* jurisdiction are required for the *quasi in rem* proceeding. *See Shaffer*, 433 U.S. at 209, 212. Because such "minimum contacts" are lacking here, California cannot invoke *quasi-in-rem* jurisdiction.

178. Lacking any constitutional method of exercising jurisdiction, California violates the Due Process Clause with each and every Extraterritorial Seizure.

179. California's Extraterritorial Seizures further violate the Due Process Clause by explicitly barring any judicial challenges to Seizure Orders by recipients of the notices, thereby denying adequate process before a seizure (and resulting deprivation of property) occurs.

COUNT IV: FOURTH AMENDMENT – EXTRATERRITORIAL SEIZURES

180. Arizona repeats and re-alleges the allegations of paragraphs 1-179, above, as if fully set forth herein.

181. California has effectuated Extraterritorial Seizures against Arizona businesses and thereby seized funds rightfully belonging to those businesses, which were located in Arizona-based accounts.

182. California's Extraterritorial Seizures violate the Fourth Amendment, which is incorporated against the States by the Fourteenth Amendment.

183. Under the Fourth Amendment, a seizure occurs whenever "there is some meaningful interference with an individual's possessory interests in that property." *United States v. Jacobsen*, 466 U.S. 109, 113 (1984).

184. The Fourth Amendment "applies in the civil context as well" as the criminal context. *Soldal v. Cook County, Ill.*, 506 U.S. 56, 67 (1992).

185. No "search" or applicable privacy interest is necessary for government action to constitute a "seizure." *Id.* at 68

186. California's Extraterritorial Seizures are "seizures" under the Fourth Amendment.

187. California's Extraterritorial Seizures are performed without obtaining a warrant or warrant-equivalent. Indeed, the underlying Seizure Orders are issued *ex parte*, without any warrant or the involvement of judicial officers, without any requirement of probable cause, and expressly preclude banks from seeking judicial review.

188. Warrantless seizures are presumptively unlawful. *See*, *e.g.*, *Coolidge v. New Hampshire*, 403 U.S. 443, 454-55 (1971) (warrantless seizures are per se unreasonable unless an exception applies).

189. California's warrantless seizures do not satisfy any exceptions to the general rule that seizures require valid warrants.

190. Even if California is not required to obtain a warrant to issue a Seizure Order for funds located in other states, California's Extraterritorial Seizures

are unreasonable under the Fourth Amendment because (1) they exercise California's sovereign power in the territory of other states without their consent, (2) are not supported by any finding of probable cause, and (3) do not seek approval from any judicial officer.

PRAYER FOR RELIEF

WHEREFORE, Arizona respectfully requests that this Court issue the following relief:

A. Declare that California's Extraterritorial Assessments violate the Due Process Clause and the Commerce Clause;

B. Declare that California's Extraterritorial Seizures violate the Due Process Clause and the Fourth Amendment;

C. Preliminarily and permanently enjoin California from engaging in Extraterritorial Assessments and Extraterritorial Seizures.

D. Enter an injunction requiring California to refund to all Arizona businesses all funds collected and/or seized by Extraterritorial Assessments and Seizures, along with associated penalties, fees and interest.

E. Award compensatory damages to Arizona in an amount to be proved before a Special Master, including for lost tax revenue attributable to California's Extraterritorial Assessments and Seizures.

F. Award costs and reasonable attorneys' fees to Arizona; and

G. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

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Exhibit A

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07.22.14

LEGAL RULING 2014-01

Subject: Business Entities that are Members of Multiple-Member Limited Liability Companies Classified as Partnerships for Tax Purposes

ISSUE

When is a business entity with a membership interest in a multiple-member limited liability company (hereafter "LLC") that is classified as a partnership for tax purposes, required to file a California return and pay any applicable taxes and fees?

LAW AND ANALYSIS

I. LLCs are Not Recognized as an Entity Choice for Tax Law Purposes

A creature of state law, every LLC is organized under a state statute that creates the entity, gives it a legal existence separate from its owners (i.e., its "members"), shields the members from vicarious liability, governs the company's operations, and controls how and when the entity comes to an end. LLCs are "hybrid" business entities in the sense that

they have some of the characteristics of both partnerships (i.e., members typically have the right to participate in the management of the business similar to general partners of general or limited partnerships) and corporations (i.e., liability protection for the members analogous to shareholders of corporations).

Despite their existence under civil law, LLCs are not recognized as an entity choice for tax law purposes. Thus, LLCs must be viewed differently for tax law purposes than they are for civil law purposes. Accordingly, tax questions involving LLCs and their members must be addressed by using applicable tax law principles that flow from the entity choice the LLC makes for tax law purposes under the federal entity classification election system,[1] and not from civil law principles.

II. The Federal Entity Classification Election System

California tax law conforms to the federal entity classification election system (commonly referred to as the "check-the-box" regulations) by mandating that an eligible business entity be either classified or disregarded for California tax purposes, just as it is for federal tax purposes.[2] Under the federal check-the-box tax classification regulations, "an eligible

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[1] See Entity Classification Election (IRS Form 8832).

[2] See Rev. & Tax. Code, § 23038(b)(2)(B)(ii) and (iii); see also Cal. Code Regs., tit. 18, § 23038(b)-3(c).

entity"[3] with two or more members is classified as a partnership unless it checks the box to be classified as an association (and thus, a corporation under Treas. Reg., § 301.7701-2(b)(2)).[4] For tax purposes, the federal check-the box tax classification scheme establishes the form of the business, and all of the tax law consequences of that decision are based on the applicable analysis for the form of entity chosen. For example, if an LLC with two or more members chooses to be treated as a corporation for tax purposes, then its members will be treated as shareholders of that corporation for tax purposes. Alternatively, if an LLC with two or more members does not check the box to be treated as a corporation, it is by default treated as a partnership for tax purposes,[5] and its members are treated as partners in that partnership for tax purposes. In this context, the term "partnership" refers to a traditional general partnership. In a general partnership, all of the partners are "general partners," who have the right to manage and conduct partnership business.

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[3] Treas. Reg., § 301.7701-3(a) provides the following, "A business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes as provided in this section."

[4] See Treas. Reg., §§ 301.7701-2(a) and 301.7701-3.

[5] Treas. Reg., § 301.7701-3(a) provides the following, "Paragraph (b) of this section provides a default classification for an eligible entity that does not make an election. Thus, elections are necessary only when an eligible entity chooses to be classified initially as other than the default classification or when an eligible entity chooses to change its classification."

III. "Doing Business" in California Under Revenue and Taxation Code Section 23101

Subdivision (a) of Revenue and Taxation Code[6] section 23101 defines "doing business" as "… actively engaging in any transaction for the purpose of financial or pecuniary gain or profit."[7] It is not necessary that there be a regular course of business or transactions to constitute "doing business" in California; any activity in this state meeting the statutory definition is sufficient.[8] In addition, the term "actively," the opposite of "passively" or "inactively," means active participation in any transaction for the purpose of

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[6] Unattributed statutory references throughout this Legal Ruling refer to the Revenue and Taxation Code unless otherwise specified.

[7] It is important to note that having a California return filing obligation and being subject to all applicable taxes and fees as a result of "doing business" in California under Section 23101, is different from the requirement to register to do business in California with the California Secretary of State. The obligation to register with the California Secretary of State arises under the definition of "transacting intrastate business" in the California Corporations Code, which defines that term as, "… enter[ing] into repeated and successive transactions of business in this state, other than in interstate or foreign commerce." (See Cal. Corp. Code, §§ 191(a) and 17708.03(a); see also former Cal. Corp. Code, § 17001(ap) [see Footnote 16 of this Legal Ruling].) For more information, see Appeal of Reitman Atlantic Corporation, 01-SBE-002, May 31, 2001. For specific questions about the requirement to register to do business in California, taxpayers should contact the California Secretary of State.

[8] *Hise v. McColgan* (1944) 24 Cal.2d 147, 151; *Golden State Theatre & Realty Corp. v. Johnson,* (1943) 21 Cal.2d 493, 496.

financial or pecuniary gain or profit.[9] A transaction does not need to result in actual profit for purposes of Section 23101; the relevant inquiry is simply whether the activity or transaction was motivated by financial or pecuniary gain or profit.[10]

For taxable years beginning on or after January 1, 2011, a taxpayer is also "doing business" in California if any of the following conditions are satisfied:

- A taxpayer is organized or commercially domiciled in California,[11] or
- A taxpayer's California sales, property, or payroll exceed the amounts then applicable[12] under paragraphs (2), (3), or (4) respectively, of subdivision (b) of Section 23101. (Subdivision (d) provides that these amounts include a taxpayer's pro rata or distributive share from pass-through entities.)

IV. Consequences for Business Entities that are Members of Multiple- Member LLCs Classified as Partnerships for Tax Purposes

Subchapter K of the Internal Revenue Code outlines the manner in which partnerships are taxed. Subsection (b) of Internal Revenue Code section 702 pro-

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9 *Hise v. McColgan*, *supra*, 24 Cal.2d 147, 151; *Golden State Theatre & Realty Corp. v. Johnson*, *supra,* 21 Cal.2d 493, 496.

10 *Hise v. McColgan*, *supra*, 24 Cal.2d 147, 150-151.

11 Rev. & Tax. Code, § 23101(b)(1).

12 These amounts are indexed for inflation. (See Rev. & Tax. Code, § 23101(c).)

vides that, "The character of any item of income, gain, loss, deduction, or credit included in a partner's distributive share … shall be determined as if such item were realized directly from the source from which realized by the partnership, or incurred in the same manner as incurred by the partnership." California conforms to these federal Subchapter K provisions.[13] Thus, for tax purposes, the business of the partnership is the business of each partner. For this reason, wherever a partnership does business, the activities of the partnership are attributed to each partner, with the consequence that in geographic locations where the partnership is "doing business," the partners are also "doing business."[14] This is true because a partner is recognized as deriving a share of partnership income and loss from the place where the partnership transacts its business.[15]

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[13] Rev. & Tax. Code, § 17851.

[14] See, e.g., *Donroy, Ltd. v. United States* (9th Cir. 1962) 301 F.2d 200; *Reed v. Industrial Accident Commission* (1937) 10 Cal. 2d 191; *Appeal of Estate of Marion Markus*, 86-SBE-097, May 6, 1986; *Appeal of Lore Pick*, 85-SBE-066, June 25, 1985; *Appeal of Custom Component Switches, Inc.*, 77-SBE-009, February 3, 1977; *Appeal of H. F. Ahmanson & Company*, 65-SBE-013, April 5, 1965; see also *Valentino v. Franchise Tax Board* (2001) 87 Cal.App.4th 1284; *Appeal of John Manter*, 99-SBE-008, December 9, 1999.

[15] See, e.g., *Donroy, Ltd. v. United States*, *supra*, 301 F.2d 200; *Moulin v. Der Zakarian* (1961) 191 Cal.App.2d 184; *Reed v. Industrial Accident Commission*, *supra*, 10 Cal. 2d 191; *Appeal of Estate of Marion Markus*, *supra*, 86-SBE-097; *Appeal of Lore Pick*, *supra*, 85-SBE-066; *Appeal of Custom Component Switches, Inc.*, *supra*, 77-SBE-009; *Appeal of H. F. Ahmanson & Company*, *supra*, 65-SBE-013; see also *Valentino v. Franchise Tax Board*, *supra*, 87 Cal.App.4th 1284; *Appeal of John Manter*, *supra*, 99-SBE-008.

If an LLC is treated as a partnership for tax purposes, both the LLC and its members, are subject to the same legal principles applicable to any partnership. Thus, if an LLC classified as a partnership for tax purposes is "doing business" in California under Section 23101, the members of the LLC are themselves "doing business" in California. This is true even in the case of "manager-managed" LLCs. Members of LLCs generally have the right to participate in the management of the business.[16] Part of that power necessarily includes the right to delegate the power to manage the business in favor of a manager, and the power to revoke that delegation at any time.[17] This analysis is not affected by whether or not members participate in the management of an LLC or appoint a manager to do so because the members' rights to participate in the management of the business arise out of the statutory relationship between an LLC and its members. Partners are considered co-owners of the partnership enterprise and the partnership acts as a conduit through which the enterprise is operated. "The courts have recognized that the execution of an agreement relinquishing control is itself an exercise of the requisite right of control over the conduct of the partnership busi-

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[16] Before January 1, 2014, see former Cal. Corp. Code, § 17150. On or after January 1, 2014, see Cal. Corp. Code, § 17704.07(b). (Please be advised that the Beverly-Killea Limited Liability Company Act in Title 2.5 of the Cal. Corp. Code [§ 17000 et seq.] is repealed effective January 1, 2014, and is replaced by the California Revised Uniform Limited Liability Company Act in Title 2.6 of the Cal. Corp. Code [§ 17701.01 et seq.].)

[17] Before January 1, 2014, see former Cal. Corp. Code, §§ 17150-17152. On or after January 1, 2014, see Cal. Corp. Code, § 17704.07(c)(5).

ness."[18] Thus, the distinction between "manager-managed" LLCs and "member-managed" LLCs is not relevant for purposes of determining whether a member of an LLC, which is "doing business" in California and is classified as a partnership for tax purposes, is "doing business" here within the meaning of Section 23101.

V. Applying the Decision of the State Board of Equalization in the Appeals of Amman & Schmid Finanz AG, et al. to Business Entities that are Members of Multiple-Member LLCs Classified as Partnerships for Tax Purposes

It is well established that partners of a partnership are "doing business" in California if the partnership is "doing business" in California. In a narrow exception, in the Appeals of Amman & Schmid Finanz AG, et al., 96-SBE-008, April 11, 1996 (hereafter "Amman & Schmid"), the State Board of Equalization (hereafter "the Board") held that out-of- state corporations whose only California contacts were as limited partners in limited partnerships were not "doing business" in California even if the limited partnerships were "doing business" in California.[19] The

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[18] *Moulin v. Der Zakarian, supra*, 191 Cal.App.2d 184, 190.

[19] In a situation where an LLC, rather than a corporation, holds a limited partnership interest in a limited partnership (and the LLC is not registered or organized in California and has no other activities in California apart from its limited partnership interest in the limited partnership), then the Board's decision in *Amman & Schmid* will apply for purposes of the "doing business" analysis under Section 23101. However, the Board's decision in *Amman & Schmid* does not apply if the LLC's distributive share of California sales, property, or payroll

Board drew this distinction based on the conclusion that the general partner of a limited partnership has the rights and powers of a partner in a general partnership, which include the right to manage and conduct partnership business. Conversely, limited partners of a limited partnership do not have the power to manage and conduct partnership business. Thus, the decision of the Board hinged on the right to manage or control the decision making process of the entity, not whether a partner enjoys limited liability. The default rules in California's LLC Act provides that members of LLCs have the right to manage and conduct the LLC's business.[20] Therefore, following the Board's logic in the Amman & Schmid decision, if an LLC is classified as a partnership for tax purposes, the members, who are considered general partners for tax purposes, are "doing business" where the LLC, i.e., a general partnership for tax purposes, is "doing business," even though the members have limited liability protection.

SITUATION 1 – LLC Only Registered To Do Business in California

LLC A:

LLC "A" is an LLC with two or more members, and is classified as a partnership for tax purposes. During a taxable year beginning on or after January 1, 2011,

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(from its limited partnership interest in the limited partnership combined with its interests in any other pass-through entities) exceeds the amounts then applicable in paragraphs (2), (3), or (4) respectively, of subdivision (b) of Section 23101.

[20] Before January 1, 2014, see former Cal. Corp. Code, § 17150. On or after January 1, 2014, see Cal. Corp. Code, § 17704.07(b).

LLC A is registered to do business in California, but has no activities or factor presence in California sufficient to constitute "doing business" within the meaning of subdivisions (a) or (b) of Revenue and Taxation Code section 23101.

Does LLC A have a California return filing requirement and obligation to pay all applicable taxes and fees?

Yes. In this situation, LLC A has a California return filing requirement and is subject to the LLC tax and fee because it is registered to do business in California.[21]

Member B:

Member "B" is a "corporation"[22] that is a member of LLC A holding a 15 percent interest in LLC A. During the same taxable year beginning on or after January 1, 2011, Member B is not incorporated, organized, or registered to do business in California, and has no activities or factor presence in California sufficient to constitute "doing business" within the meaning of subdivisions (a) or (b) of Section 23101, and has no California source income.

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[21] See Rev. & Tax. Code, §§ 18633.5, 17941(b)(1), and 17942.

[22] In each of the situations addressed throughout this Legal Ruling, the business entity member in question being referred to as a "corporation" means either an entity incorporated under the laws of any jurisdiction or an LLC organized under the laws of any jurisdiction that is classified as an association taxable as a corporation for tax purposes.

Does Member B have a California return filing requirement and obligation to pay all applicable taxes and fees as a result of its membership interest in LLC A?

No. The fact that LLC A has a California return filing requirement and obligation to pay all applicable taxes and fees solely by virtue of registering to do business in California does not result in its member, Member B, also having a California return filing requirement and obligation to pay all applicable taxes and fees.

In this situation, Member B does not have a California return filing requirement and is not subject to the franchise tax as a result of its membership interest in LLC A, because LLC A's act of registering to do business in California is not a transaction or activity for the purpose of financial or pecuniary gain or profit that is attributed to Member B.

SITUATION 2 – LLC Only Organized in California

LLC C:

LLC "C" is an LLC with two or more members, and is classified as a partnership for tax purposes. LLC C is organized in California within the meaning of paragraph (1) of subdivision (b) of Section 23101. During a taxable year beginning on or after January 1, 2011, LLC C has no other activities or factor presence in California sufficient to constitute "doing business" within the meaning of subdivisions (a) or (b) of Section 23101.

Does LLC C have a California return filing requirement and obligation to pay all applicable taxes and fees?

Yes. In this situation, LLC C has a California return filing requirement and is subject to the LLC tax and fee because it is organized in California.[23]

Member D:

Member "D" is a corporation that is a member of LLC C holding a 15 percent interest in LLC C. During the same taxable year beginning on or after January 1, 2011, Member D is not incorporated, organized, or registered to do business in California and has no activities or factor presence in California other than through its membership in LLC C, and has no California source income.

Does Member D have a California return filing requirement and obligation to pay all applicable taxes and fees as a result of its membership interest in LLC C?

No. The fact that LLC C has a California return filing requirement and obligation to pay all applicable taxes and fees solely by virtue of organizing in California does not result in its member, Member D, also having a California return filing requirement and obligation to pay all applicable taxes and fees. Although being organized in California is considered "doing business" within the meaning of paragraph (1)

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[23] See Rev. & Tax. Code, §§ 18633.5, 17941(b)(1), and 17942. For taxable years beginning on or after January 1, 2011, see also Rev. & Tax. Code, § 17941(a).

of subdivision (b) of Section 23101, the act of organizing in California is not attributed to the LLC's members for purposes of whether the members are "doing business" in this state.

In this situation, Member D does not have a California return filing requirement and is not subject to the franchise tax as a result of its membership interest in LLC C, because LLC C's act of organizing in California is not a transaction or activity for the purpose of financial or pecuniary gain or profit that is attributed to Member D.

SITUATION 3 – LLC Commercially Domiciled in California

LLC E:

LLC "E" is an LLC with two or more members, and is classified as a partnership for tax purposes. During a taxable year beginning on or after January 1, 2011, LLC E is commercially domiciled in California within the meaning of paragraph (1) of subdivision (b) of Section 23101.

Does LLC E have a California return filing requirement and obligation to pay all applicable taxes and fees?

Yes. In this situation, LLC E is "doing business" in California within the meaning of Section 23101 because it is commercially domiciled in California; therefore, it has a California return filing requirement and is subject to the LLC tax and fee.[24]

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[24] See Rev. & Tax. Code, §§ 18633.5, 17941(a), and 17942.

Member F:

Member "F" is a corporation that is a member of LLC E holding a 15 percent interest in LLC E. During the same taxable year beginning on or after January 1, 2011, Member F is not incorporated, organized, or registered to do business in California and has no activities or factor presence in California other than through its membership in LLC E.

Does Member F have a California return filing requirement and obligation to pay all applicable taxes and fees as a result of its membership interest in LLC E?

Yes. The term "commercial domicile" refers to the principal place from which the trade or business of the taxpayer is directed or managed.[25] Put another way, the location of a taxpayer's commercial domicile is based on activity; i.e., the location of the day-to-day management of the business.[26] Therefore, because LLC E is commercially domiciled in California, one or more of its members are engaging in day-to-day management, which constitutes a transaction or activity in California for the purpose of financial or pecuniary gain or profit within the meaning of Section 23101. Because LLC E is classified as a partnership for tax purposes, this activity is attributed to each of LLC E's members under general principles of partnership law, and thus, the members are "doing business" in California within the meaning of Section

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[25] See Rev. & Tax. Code, § 25120(b).

[26] See *Appeal of Norton-Simon, Inc.*, 72-SBE-008, March 28, 1972.

23101. The members have a California return filing requirement and must pay all applicable taxes and fees.

In this situation, Member F is "doing business" in California within the meaning of Section 23101; therefore, it has a California return filing requirement and is subject to the franchise tax.[27]

SITUATION 4 – LLC "Doing Business" in California

LLC G:

LLC "G" is an LLC with two or more members, and is classified as a partnership for tax purposes. During a taxable year beginning on or after January 1, 2011, LLC G has activities or factor presence in California sufficient to constitute "doing business" within the meaning of subdivisions (a) or (b) of Section 23101.

Does LLC G have a California return filing requirement and obligation to pay all applicable taxes and fees?

Yes. In this situation, LLC G is "doing business" in California within the meaning of Section 23101; therefore, it has a California return filing requirement and is subject to the LLC tax and fee.[28]

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[27] See Rev. & Tax. Code, §§ 18601, 23151, and 23153.

[28] See Rev. & Tax. Code, §§ 18633.5, 17941(a), and 17942.

Member H:

Member "H" is a corporation that is a member of LLC G holding a 15 percent interest in LLC G. During the same taxable year beginning on or after January 1, 2011, Member H is not incorporated, organized, or registered to do business in California and has no activities or factor presence in California other than through its membership in LLC G.

Does Member H have a California return filing requirement and obligation to pay all applicable taxes and fees as a result of its membership interest in LLC G?

Yes. Because LLC G is classified as a partnership for tax purposes and is "doing business" in California within the meaning of Section 23101, all of LLC G's members are "doing business" in California, and thus have California return filing requirements and are subject to all applicable taxes and fees, because the attribute of "doing business" by LLC G is attributed to its members under general principles of partnership law.

In this situation, Member H is "doing business" in California within the meaning of Section 23101; therefore, it has a California return filing requirement and is subject to the franchise tax.[29]

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[29] See Rev. & Tax. Code, §§ 18601, 23151, and 23153.

SITUATION 5 – "Manager-Managed" LLC "Doing Business" in California

LLC I:

LLC "I" is an LLC with two or more members, and is classified as a partnership for tax purposes. During a taxable year beginning on or after January 1, 2011, LLC I has activities or factor presence in California sufficient to constitute "doing business" within the meaning of subdivisions (a) or (b) of Section 23101. LLC I is a "manager-managed" LLC.

Does LLC I have a California return filing requirement and obligation to pay all applicable taxes and fees?

Yes. In this situation, LLC I is "doing business" in California within the meaning of Section 23101; therefore, it has a California return filing requirement and is subject to the LLC tax and fee.[30]

Member J:

Member "J" is a corporation that is a member of LLC I holding a 15 percent interest in LLC I. During the same taxable year beginning on or after January 1, 2011, Member J is not incorporated, organized, or registered to do business in California and has no activities or factor presence in California other than through its membership in LLC I.
Does Member J have a California return filing requirement and obligation to pay all applicable taxes

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[30] See Rev. & Tax. Code, §§ 18633.5, 17941(a), and 17942.

and fees as a result of its membership interest in LLC I?

Yes. Because LLC I is classified as a partnership for tax purposes and is "doing business" in California within the meaning of Section 23101, all of LLC I's members are "doing business" in California, and thus have California return filing requirements and are subject to all applicable taxes and fees, because LLC I's attribute of "doing business" is attributed to its members under general principles of partnership law. The distinction between "manager-managed" LLCs and "member-managed" LLCs is not relevant for purposes of determining whether members of an LLC classified as a partnership for tax purposes are "doing business" in California within the meaning of Section 23101.

In this situation, Member J is "doing business" in California within the meaning of Section 23101; therefore, it has a California return filing requirement and is subject to the franchise tax.[31]

SITUATION 6 – California Sales Exceed the Sales Amount in Section 23101(b)(2)

LLC K:

LLC "K" is an LLC with two or more members, and is classified as a partnership for tax purposes. During a taxable year beginning on or after January 1, 2011, the sales in California of LLC K exceed the sales amount then applicable in paragraph (2) of subdivision (b) of Section 23101.

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[31] See Rev. & Tax. Code, §§ 18601, 23151, and 23153.

Does LLC K have a California return filing requirement and obligation to pay all applicable taxes and fees?

Yes. In this situation, LLC K is "doing business" in California within the meaning of Section 23101; therefore, it has a California return filing requirement and is subject to the LLC tax and fee.[32]

Member L:

Member "L" is a corporation that is a member of LLC K holding a 15 percent interest in LLC K. During the same taxable year beginning on or after January 1, 2011, Member L's distributive share of the California sales of LLC K, exceed the sales amount then applicable in paragraph (2) of subdivision (b) of Section 23101. However, Member L is not incorporated, organized, or registered to do business in California and has no activities or factor presence in California other than through its membership in LLC K.

Does Member L have a California return filing requirement and obligation to pay all applicable taxes and fees as a result of its membership interest in LLC K?

Yes. Member L is "doing business" in California because its distributive share of the California sales of LLC K, as provided by subdivision (d) of Section 23101, exceeds the sales amount then applicable in paragraph (2) of subdivision (b) of Section 23101. A separate reason Member L is "doing business" in California is because LLC K, which is classified as a

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[32] See Rev. & Tax. Code, §§ 18633.5, 17941(a), and 17942.

partnership for tax purposes, is "doing business" in California under Section 23101. Because LLC K is treated as a partnership, its attribute of "doing business" in California is attributed to all of its members under general principles of partnership law. Thus, all of LLC K's members are "doing business" in California; and therefore, have a California return filing requirement and are subject to all applicable taxes and fees.

In this situation, Member L is "doing business" in California within the meaning of Section 23101; therefore, it has a California return filing requirement and is subject to the franchise tax.[33]

CONCLUSION

In all of the situations presented above, the LLCs in question have California return filing requirements and are subject to the LLC tax and fee. In the first two situations, the corporate members in question are not required to file California returns and are not subject to the franchise tax because the LLCs' acts of registering to do business in California and organizing in California are not attributed to their members. Conversely, in the remaining situations, the corporate members in question have California return filing obligations and are subject to the franchise tax, because the activities of the LLCs are attributed to their members under general principles of partnership law, and those activities constitute "doing business" within the meaning of subdivisions (a) or

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[33] See Rev. & Tax. Code, §§ 18601, 23151, and 23153.

(b) of Revenue and Taxation Code section 23101.[34] Additionally, in Situation 6, Member L is also "doing business" in California because its distributive share of the California sales of LLC K exceed the sales amount then applicable in paragraph (2) of subdivision (b) of Section 23101.

DRAFTING INFORMATION

The principal author of this ruling is Adam Susz of the Franchise Tax Board, Legal Division. For further information regarding this ruling, contact Mr. Susz at the Franchise Tax Board, Legal Division, P.O. Box 1720, Rancho Cordova, CA 95741-1720.

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[34] This same analysis is applicable to any other business entity that is subject to a California return filing requirement and the imposition of all applicable taxes and fees on the basis of "doing business" in California within the meaning of subdivisions (a) or (b) of Section 23101.

Exhibit B

LEGAL DIVISION MS A260
P.O. Box 1720
Rancho Cordova CA 95741-1720

02.28.17

FTB NOTICE 2017-01

SUBJECT: Court of Appeal Decision in Swart Enterprises, Inc. v. Franchise Tax Board

Purpose

This Notice is issued for the purpose of informing taxpayers and their representatives of a recent decision by the Court of Appeal of the State of California, Fifth Appellate District, in *Swart Enterprises, Inc. v. Franchise Tax Board*.

Background

On January 12, 2017, the Court of Appeal issued a published decision in *Swart Enterprises, Inc. v. Franchise Tax Board* (Cal. App. 5th Dist. 2017) 7 Cal. App. 5th 497 ("*Swart*"). In this case, the court held that Swart Enterprises, Inc., an Iowa corporation (the "Iowa Corporation"), was not doing business in California and therefore was not subject to the $800 minimum franchise tax that the Franchise Tax Board had assessed.

In *Swart*, the Iowa Corporation held a 0.2 percent membership interest in a manager-managed California LLC that was doing business in California. The Iowa Corporation acquired its 0.2 percent membership interest in the California LLC after the original members made the decision for the California LLC to be manager-managed. The original members delegated to a sole manager full, exclusive and complete authority to manage and control the California LLC. The Iowa Corporation's sole connection to California was its above ownership interest in the California LLC.

Conclusion

The Franchise Tax Board will not appeal the *Swart* decision. The Franchise Tax Board will follow the Court of Appeal decision in *Swart* in situations with the same facts. To the extent taxpayers believe their situation has the same facts as in *Swart*, they should take that into consideration in determining if they have a return filing obligation and/or file a claim for refund, as appropriate. In any claim for refund, taxpayers should cite the holding in *Swart* and explain how their factual situation is the same as the facts in *Swart*.

The principal author of this Notice is Adam Susz of the Franchise Tax Board, Legal Division. For further information regarding this Notice, contact Mr. Susz at the Franchise Tax Board, Legal Division, P.O. Box 1720, Rancho Cordova, CA 95741-1720.

Exhibit C

Legal Division MS A260
PO Box 1720
Rancho Cordova, CA 95741-1720

October 19, 2018

LEGAL RULING 2018-01

SUBJECT: MODIFICATION OF LEGAL RULING 2014-01: BUSINESS ENTITIES THAT ARE MEMBERS OF MULTIPLE-MEMBER LIMITED LIABILITY COMPANIES CLASSIFIED AS PARTNERSHIPS FOR TAX PURPOSES

PURPOSE

Legal Ruling 2014-01 sets forth the department's analysis on a number of "doing business" scenarios involving members of multiple-member limited liability companies (LLCs) that are classified as partnerships for tax purposes. After a review of subsequent judicial authority, the Franchise Tax Board has determined that some of the language in that ruling, specifically relating to the relevance of the distinction between "manager-managed" LLCs and "member-managed" LLCs, should be revised to provide additional clarity and guidance.

DESCRIPTION OF SPECIFIC MODIFICATIONS

The first paragraph on page four of Legal Ruling 2014-01 is modified to read: If an LLC is treated as a partnership for tax purposes, both the LLC and its members, are subject to the same legal principles applicable to any partnership. Thus, if an LLC classified as a partnership for tax purposes is "doing business" in California under Section 23101, the members of the LLC are themselves generally considered to be "doing business" in California. A narrow exception may apply in limited circumstances. (See *Swart Enterprises, Inc. v. Franchise Tax Board* (Cal. App. 5th Dist. 2017) 7 Cal. App. 5th 497; see also FTB Notice 2017-01, Subject: Court of Appeal Decision in Swart Enterprises, Inc. v. Franchise Tax Board, February 28, 2017.)

The third paragraph on page 10 of Legal Ruling 2014-01 is modified to read: Yes. Because LLC I is classified as a partnership for tax purposes and is "doing business" in California within the meaning of Section 23101, all of LLC I's members are generally considered to be "doing business" in California, and thus have California return filing requirements and are subject to all applicable taxes and fees, because LLC I's attribute of "doing business" is attributed to its members under general principles of partnership law. A narrow exception may apply in limited circumstances. (See *Swart Enterprises, Inc. v. Franchise Tax Board* (Cal. App. 5th Dist. 2017) 7 Cal. App. 5th 497 ("*Swart*"); see also FTB Notice 2017-01, Subject: Court of Appeal Decision in Swart Enterprises, Inc. v. Franchise Tax Board, February 28, 2017.) Please note that Member J's 15 percent

membership interest in LLC I greatly exceeds the taxpayer's 0.2 percent membership interest in the *Swart* Court of Appeal decision.

EFFECT ON OTHER RULINGS

Legal Ruling 2014-01 is modified as described herein.

DRAFTING INFORMATION

The principal author of this Legal Ruling is Adam J. Susz of the Franchise Tax Board, Legal Division. For further information regarding this ruling, contact Mr. Susz at the Franchise Tax Board, Legal Division, P.O. Box 1720, Rancho Cordova, California 95741-1720.

Exhibit D

STATE OF CALIFORNIA
FRANCHISE TAX BOARD
PO Box 1468
Sacramento CA 95812

Notice Date: 08.23.18

Claim for Refund Denial

GUARDIAN EAGLE INVESTMENTS LLC
15 SWEETWATER LN
HILTON HEAD ISLAND SC 29926-2626

Case:	25200648821832460
Case Unit:	25200648821832463
Tax Years:	2013
In Reply, Refer to:	389:MIR:F340
FEIN:	462848553
TaxpayerName:	GUARDIAN EAGLE INVESTMENTS LLC

Your claim for a refund of the annual\franchise tax for the tax year(s) above is denied.

The Court of Appeal in *Swart Enterprises, Inc. v. Franchise Tax Board* (Cal. App. 5th Dist. 2017) 7 Cal. App. 5th 497 ("*Swart*") determined that Swart

Enterprises, Inc. was not doing business in California based on the following facts:

- The only connection with California was 0.2 percent membership interest in an LLC that was doing business in California.

- The California LLC was manager-managed.

- The original members of the California LLC made the decision to delegate their authority to a manager before Swart Enterprises, Inc. acquired its membership interest in the California LLC.

The Court of Appeal failed to provide any guidance in its decision as to whether one fact is more significant than another.

Based upon the information available to the Franchise Tax Board, your claim has been denied for the following reason(s):

_____The claim was not filed within the statute of limitations for filing a claim.

_____You did not respond to our attached final information request for each tax year claimed.

____X___You did not meet one or more of the above facts as per the Swart decision.

Your claim for refund of the annual\franchise tax is denied. If you do not agree with our action, and you

wish to appeal, you must file your appeal with the Office of Tax Appeals (OTA) within 90 days of the date of this letter. If no appeal is filed within the 90 days, this action will become final after that date.

Maricar Rogan
Telephone: 916.843.5733
Fax: 916.843.2306

Enclosure: [Enclosure Omitted]

Exhibit E

STATE OF CALIFORNIA
FRANCHISE TAX BOARD
PO Box 1468
Sacramento CA 95812

Notice Date: 08.23.18

Claim for Refund Denial

KWC HOLDINGS LLC
6102 E MONTECITO AVE
SCOTTSDALE AZ 85251-1936

Case:	31570650026810140
Case Unit:	31570650026810140
Tax Years:	2013
In Reply, Refer to:	389:MIR:F340
FEIN:	4628903696
TaxpayerName:	KWC HOLDINGS LLC

Your claim for a refund of the annual\franchise tax for the tax year(s) above is denied.

The Court of Appeal in *Swart Enterprises, Inc. v. Franchise Tax Board* (Cal. App. 5th Dist. 2017) 7 Cal. App. 5th 497 ("*Swart*") determined that Swart

Enterprises, Inc. was not doing business in California based on the following facts:

- The only connection with California was 0.2 percent membership interest in an LLC that was doing business in California.

- The California LLC was manager-managed.

- The original members of the California LLC made the decision to delegate their authority to a manager before Swart Enterprises, Inc. acquired its membership interest in the California LLC.

The Court of Appeal failed to provide any guidance in its decision as to whether one fact is more significant than another.

Based upon the information available to the Franchise Tax Board, your claim has been denied for the following reason(s):

_____The claim was not filed within the statute of limitations for filing a claim.

_____You did not respond to our attached final information request for each tax year claimed.

____X___You did not meet one or more of the above facts as per the Swart decision.

Your claim for refund of the annual\franchise tax is denied. If you do not agree with our action, and you

wish to appeal, you must file your appeal with the Office of Tax Appeals (OTA) within 90 days of the date of this letter. If no appeal is filed within the 90 days, this action will become final after that date.

Maricar Rogan
Telephone: 916.843.5733
Fax: 916.843.2306

Enclosure: [Enclosure Omitted]

Exhibit F

STATE OF CALIFORNIA
FILING ENFORCEMENT SECTION MS F180
FRANCHISE TAX BOARD
PO BOX 942857
SACRAMENTO, CA 94257-0540

Telephone: 966.204.7902
Fax: 916.843.6169
ftb.ca.gov/inc

Notice Number: 01-4288383-051515

Demand for Tax Return

Notice Date: 05/15/2015

Entity ID: 999900027936

Code Number: 49

Notice Number: 01-4288383-051515

PWS5 LLC CO SYNDER FAMILY TRUST UTA DATE
4226 S BUENA TERRA WAY
PHOENIX, AZ 85018

Your reply is due: Wednesday, June 17, 2015

You must respond by 06/17/2015

We have no record of your: California business entity tax return for taxable year 2013 under the entity ID number: 999900027936

This notice is a demand for your 2013 tax return.
We believe you need to file a 2013 California business entity tax return.

We received information from **INNUTRA LLC** that your business entity is a partner in a California partnership, a member of a limited liability company, or a beneficiary in an estate/trust. Your allocation of income as reported on the Schedule K-1 is taxable in California, even if you were not doing business in California. This information indicates that you may have a California filing requirement.

We searched our records for the taxable year **2013** and failed to locate your business entity's income tax return under the name and entity ID number shown on this notice.

[Instructions on how to respond and obtain forms omitted]
[*Reply to FTB* omitted]

Exhibit G

STATE OF CALIFORNIA
FILING ENFORCEMENT SECTION MS F180
FRANCHISE TAX BOARD
PO BOX 942857
SACRAMENTO, CA 94257-0021

Telephone: 966.204.7902
Fax: 916.843.6169
ftb.ca.gov/inc

Notice Number: 01-1882777-103015

Notice of Proposed Assessment

Notice Date: 10/30/2015

Entity ID: 999900027936

Code Number: 49

NPA Number: 00493894

Revenue Code: 2008225

Amount: $1,574.40

PWS5 LLC CO SYNDER FAMILY TRUST UTA DATE
4226 S BUENA TERRA WAY
PHOENIX, AZ 85018

We sent you a notice on **05/15/2015** indicating that we have no record that a **2013** California business entity tax return was filed under the account name

and/or entity number listed above. We asked you to do one of the following by: **06/17/2015**

- File a **2013** California business entity tax return.
- Send us a copy of the previously filed tax return.
- Explain why you do not have a requirement to file a **2013** California business entity tax return.

We have neither a record of your tax return nor information that would indicate you do not have a filing requirement. We based this *Notice of Proposed Assessment* on your available income information.

This is a proposed assessment. It is not a tax bill.

Filing a tax return may reduce your tax liability and ensure that you receive full credit for payments, and any other credits and deductions that you have a right to claim.

Total income for fee purposes (as estimated)	$
AnnualTax	$800.00
LLC Fee	$
Less payments and credits	-
Delinquent penalty	+
Underpayment penalty	+
Monthly penalty to: 10/30/2015	+
Demand penalty	+200.00
Late filing penalty	+432.00
Nonqualified, suspended, or forfeited penalty	+
Filing enforcement fee	+79.00
Interest to: 10/30/2015	+63.40

Total Tax, Penalties, Interest & Fees $1,574.40

You will pay no additional interest if we receive your payment within 15 days of the date we mailed this notice. The proposed assessment will be due and payable on **December 30, 2015**, unless we receive your tax return or a protest of the proposed assessment prior to this date.

If you have a California filing requirement, you must file a tax return and pay the tax on the tax return plus any applicable penalties and/or interest. After FTB processes the tax return, you will be informed of any balance due. If you believe this notice is incorrect, follow the enclosed protest procedures. Mail your protest by **December 29, 2015.**
We may provide the information contained in this notice to the Internal Revenue Service.

Exhibit H

STATE OF CALIFORNIA
FILING ENFORCEMENT SECTION MS F180
FRANCHISE TAX BOARD
PO BOX 942857
SACRAMENTO, CA 94257-0511

Notice Date: 02/05/16

Notice of Balance Due

PWS5 LLC CO SYNDER FAMILY TRUST UTA DATE D DECEMBER 2007
4226 S BUENA TERRA WAY
PHOENIX, AZ 85018

NOTICE NUMBER:	**4330439160129**
ENTITY ID:	**SOSL 999900027936**
TAX YR(S) END:	**12/13**
BALANCE DUE	**$1,586.48**

Return this part with your payment. ↑
Keep this part for your records. ↓

Entity ID: SOSL 999900027936

Payment Due Date: 02/22/16

The proposed assessments are final for tax year ending 12/31/13. This notice lists the tax year, current balance due, and the payment due date. Refer to the table below for details. We enclosed an FTB 1138, *Business Entity Refund/Billing Information*,

insert. It provides details about penalties, interest, and fees.

Summary of Account Balance

Tax Years Ending:	12/13
Tax:	800.00
Penalty/Fee:	711.00
Interest:	75.48
Credits/Payments:	0.00

Total Balance Due: $1,586.48

Pay the balance due by the payment due date shown on the top of this notice. If your business entity does not pay by that date, additional penalties and interest will accrue.

Send a check or money order with the above payment coupon to the address shown at the top of this notice. If your business entity meets the requirements for the Electronic Funds Transfer program, it must pay by that method.

If your business entity does not pay the balance due within 30 days, we may assess a collection fee.[1] We may also file or record a notice of state tax lien per California Government Code Section 7171.

Connect With Us
[Contact information omitted]

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[1] Collection fees: $226 for partnerships and $334 for corporations and LLCs filing as corporations.

Exhibit I

STATE OF CALIFORNIA
FRANCHISE TAX BOARD
PO BOX 942857
SACRAMENTO, CA 94257-2021
Telephone: (888) 635-0494

Notice Date: 08/23/16

LLC FINAL NOTICE BEFORE LEVY

PWS5 LLC CO SYNDER FAMILY TRUST UTA
4226 S BUENA TERRA WAY
PHOENIX, AZ 85018
USA

SOS Number:	999900027936000
FEIN:	462890037000
Tax Year(s):	12/13

Balance Due:	**$1,611.40**
Final Date for Payment:	**09/07/16**

Return this part with your payment. ↑
Keep this part for your records. ↓

LLC FINAL NOTICE BEFORE LEVY

Notice Date:	08/23/16
Taxable Year(s):	12/13
SOS Number:	999900027936000
FEIN:	462890037000
Balance Due:	$1,611.40
Final Date for Payment:	09/07/16

This is your final notice before levy. If you do not pay this balance immediately, we can begin collection

actions without further notice to you. Partial payment will not stop collection action. You must also file all tax returns noted below and pay the related tax, penalties, fees, and interest.

If you do not comply, we may take the following collection actions:

- Impose a $266.00 collection fee. The amount of the fee may change without further notice based on legislative requirements.
- File liens against company property.
- Attach company accounts receivable and bank accounts.
- Contact third parties.
- Suspend or forfeit the company's rights, powers, and privileges.
- Issue warrants to seize and sell company property.

YOU MUST PAY THE FULL AMOUNT DUE BY 09/07/16 TO AVOID ADDITIONAL INTEREST AND PENALTIES.

[Instructions on how to remit payment and contact Tax Board omitted]

SUMMARY OF BALANCE DUE

YEARS:	12/13
TAX:	$800.00
PENALTY:	$632.00
INTEREST:	$100.40
FEES:	$79.00
EST. CREDITS:	$0.00

PAYMENTS: $0.00
TOTAL: $1,611.40

RETURN(S) DUE: **12/13**
PAY THIS AMOUNT: **$1,611.40**

Please see the enclosure for important information.

[Enclosures omitted]

Exhibit J

STATE OF CALIFORNIA
FILING ENFORCEMENT SECTION MS F180
FRANCHISE TAX BOARD
PO BOX 942857
SACRAMENTO, CA 94257-0540

Telephone: 966.204.7902
Fax: 916.843.6169
ftb.ca.gov/inc

Notice Number: 01-3441881-062416

Demand for Tax Return

Notice Date: 06/24/2016

Entity ID: 999900027936

Code Number: 49

Notice Number: 01-3441881-062416

PWS5 LLC CO SYNDER FAMILY TRUST UTA DATE
4226 S BUENA TERRA WAY
PHOENIX, AZ 85018

Your reply is due: Wednesday, July 27, 2016

You must respond by 07/27/2016

We have no record of your: California business entity tax return for taxable year 2014 under the entity ID number: 999900027936

This notice is a demand for your 2014 tax return.
We believe you need to file a 2014 California business entity tax return.

We received information from **INNUTRA LLC** that your business entity is a partner in a California partnership, a member of a limited liability company, or a beneficiary in an estate/trust. Your allocation of income as reported on the Schedule K-1 is taxable in California, even if you were not doing business in California. This information indicates that you may have a California filing requirement.

We searched our records for the taxable year **2014** and failed to locate your business entity's income tax return under the name and entity ID number shown on this notice.

[Instruction on how to respond and obtain forms omitted]
[*Reply to FTB* omitted]

Exhibit K

STATE OF CALIFORNIA
FILING ENFORCEMENT SECTION MS F180
FRANCHISE TAX BOARD
PO BOX 942857
SACRAMENTO, CA 94257-0021

Notice Number: 01-2176116-092316

Notice of Proposed Assessment

Notice Date: 09/23/2016

Entity ID: 999900027936

Code Number: 49

NPA Number: 00585372

Revenue Code: 2008225

Amount: $1,573.80

PWS5 LLC CO SYNDER FAMILY TRUST UTA DATE
4226 S BUENA TERRA WAY
PHOENIX, AZ 85018

We sent you a notice on **06/24/2016** indicating that we have no record that a **2014** California business entity tax return was filed under the account name and/or entity number listed above. We asked you to do one of the following by: **07/27/2016**

- File a **2014** California business entity tax return.

- Send us a copy of the previously filed tax return.
- Explain why you do not have a requirement to file a **2014** California business entity tax return.

We have no record of receiving your tax return nor information indicating that you do not have a filing requirement. We based this *Notice of Proposed Assessment* on your available income information.

This is a proposed assessment. It is not a tax bill.

Filing a tax return may reduce your tax liability and ensure that you receive full credit for payments, and any other credits and deductions that you have a right to claim.

Total income for fee purposes (as estimated)	$
AnnualTax	$800.00
LLC Fee	$
Less payments and credits	-
Delinquent penalty	+
Underpayment penalty	+
Monthly penalty to: 10/30/2015	+
Demand penalty	+200.00
Late filing penalty	+432.00
Nonqualified, suspended, or forfeited penalty	+
Filing enforcement fee	+81.00
Interest to: 10/30/2015	+60.80
Total Tax, Penalties, Interest & Fees	**$1,573.80**

[Information about accrual of interest and how to file a protest omitted]

Exhibit L

STATE OF CALIFORNIA
FILING ENFORCEMENT SECTION MS F180
FRANCHISE TAX BOARD
PO BOX 942857
SACRAMENTO, CA 94257-0511

Notice Date: 01/03/17

Notice of Balance Due

PWS5 LLC CO SYNDER FAMILY TRUST UTA DATE D DECEMBER 2007
4226 S BUENA TERRA WAY
PHOENIX, AZ 85018

NOTICE NUMBER:	**4330439160129**
ENTITY ID:	**SOSL 999900027936**
TAX YR(S) END:	**12/14 12/13**
BALANCE DUE	**$3,480.79**

Return this part with your payment. ↑
Keep this part for your records. ↓

Entity ID: SOSL 999900027936

Payment Due Date: 01/18/17

The proposed assessments are final for tax year ending 12/31/14. This notice lists the tax year, current balance due, and the payment due date. Refer to the table below for details. We enclosed an FTB 1138, *Business Entity Refund/Billing Information*,

insert. It provides details about penalties, interest, and fees.

Summary of Account Balance

Tax Years Ending:	12/14 12/13
Tax:	1,600.00
Penalty/Fee:	1,690.00
Interest:	190.79
Credits/Payments:	0.00
Total Balance Due:	$3,480.79

Pay the balance due by the payment due date shown on the top of this notice. If your business entity does not pay by that date, additional penalties and interest will accrue.

Send a check or money order with the above payment coupon to the address shown at the top of this notice. If your business entity meets the requirements for the Electronic Funds Transfer program, it must pay by that method.

If your business entity does not pay the balance due within 30 days, we may assess a collection fee.[1] We may also file or record a notice of state tax lien per California Government Code Section 7171.

Connect With Us
[Contact information omitted]

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[1] Collection fees: $266 for partnerships and $365 for corporations and LLCs filing as corporations.

Exhibit M

STATE OF CALIFORNIA
FRANCHISE TAX BOARD
PO BOX 942857
SACRAMENTO, CA 94257-2021
Telephone: (888) 635-0404

Notice Date: 03/20/17

NOTICE OF STATE TAX LIEN

PWS5 LLC CO SYNDER FAMILY TRUST UTA
4226 S BUENA TERRA WAY
PHOENIX, AZ 85018
USA

Account Number: 999900027936000

FEIN: 462890037000
Taxable Years: 12/14, 12/13

Balance Due: **$3,548.33**

Due Date: **PAST DUE**

Return this part with your payment. ↑
Keep this part for your records. ↓

NOTICE OF STATE TAX LIEN
Notice Date: 03/20/17
Taxable Year(s): 12/14, 12/13
Account Number: 999900027936000
FEIN: 462890037000
Balance Due: $3,548.33
Due Date: PAST DUE

Name: PWS5 LLC CO SYNDER FAMILY TRUST UTA DATE D DECEMBER 2007
Certificate Number: 17074462642

We filed a state tax lien against you with the county recorder in SACRAMENTO for failure to pay California Partnership or Limited Liability Company tax (authorized by Government Code Section 7171). The lien attaches to all real property now owned or later acquired.

A lien is a public record and may seriously damage your credit. If the balance due is not paid immediately we may take additional collection actions, including contacting third parties, without further notice.

The balance due includes recording fees. When the balance is paid, we will ask the county recorder to release the lien.

Additional penalties and interest accrue at the rate set by law from the notice date to the date we receive payment. However, no additional interest will accrue if we receive full payment within 15 days from the date of this notice.

[Enclosures and information about how to pay tax, contact the Tax Board and release lien omitted]

Exhibit N

STATE OF CALIFORNIA
FRANCHISE TAX BOARD
PO BOX 942857
SACRAMENTO, CA 94257-2021
Telephone: (888) 635-0494

Notice Date: 05/30/17

LLC PRE-LEVY NOTICE

PWS5 LLC CO SYNDER FAMILY TRUST UTA
4226 S BUENA TERRA WAY
PHOENIX, AZ 85018
USA

SOS Number: 999900027936000

FEIN: 462890037000
Taxable Years: 12/14, 12/13

Balance Due: **$3,572.39**

Final Date for Payment: **06/14/17**

Return this part with your payment. ↑
Keep this part for your records. ↓

LLC PRE-LEVY NOTICE
Notice Date: 05/30/17
Taxable Year(s): 12/14, 12/13
SOS Number: 999900027936000
FEIN: 462890037000
Balance Due: $3,572.39
Final Date for Payment: 06/14/17

We previously sent you a notice to pay the balance due on your account. The amount remains unpaid.

This is your **FINAL NOTICE** to pay in full today, prior to a **LEVY**. If you do not comply, we may attach accounts receivable and bank accounts. Partial payment will not stop collection action.

YOU MUST PAY THE FULL AMOUNT BY 06/14/17 TO AVOID ADDITIONAL INTEREST, PENALTIES AND FEES. Please make your check or money order payable to Franchise Tax Board and mail it to: FRANCHISE TAX BOARD, PO Box 942857 Sacramento CA 94257-0611.

To ensure proper credit to your account, please write your limited liability company name, Secretary of State (SOS) number, and FEIN on the front of your payment, and return it with the top part of this notice.

If you write to us, please include the name, address, and daytime telephone number of an authorized person whom we may contact if we need additional information regarding the limited liability company.

The balance due reflects all payments and credits received through May 07, 2017. If you paid the balance in full after this date, please disregard this notice. If you paid the balance in full before this date, contact us immediately with proof of payment.

SUMMARY OF BALANCE DUE

YEARS:	12/14
TAX:	$800.00

PENALTY:	$632.00
INTEREST:	$97.91
FEES:	$123.00
EST. CREDITS:	$0.00
PAYMENTS:	$0.00
TOTAL:	$1,652.91

YEARS:	12/13
TAX:	$800.00
PENALTY:	$632.00
INTEREST:	$142.48
FEES:	$345.00
EST. CREDITS:	$0.00
PAYMENTS:	$0.00
TOTAL:	$1,919.48

RETURN(S) DUE:	**12/14, 12/13**
PAY THIS AMOUNT:	**$3,572.39**

Please see the enclosure for important information.

[Enclosures omitted]

Exhibit O

[Wells Fargo logo]

Legal Order Processing S3928-021
P.O. Box 29779
Phoenix, AZ 85038

December 7, 2016

PWS5 LLC
4226 E BUENA TERRA WAY
PHOENIX AZ 85018-1103

Subject: Required withdrawal from your account ending in 7394
Wells Fargo case number: 107974816

Dear PWS5 LLC:

We want to let you know that on December 7, 2016, Wells Fargo was served with the legal order, in the amount of $1,889.89, which requires us by law to deduct money from your account. As a result, we withdrew $o.oo from your account on December 7, 2016 and charged a non-refundable processing fee of $125.00.

Account Number	XXXXXX7394
Debit Amount	$0.00
Bank Fee	$125.00

[Instructions about obtaining more information about legal order and signature block omitted]

[Wells Fargo logo]

Legal Order Processing S3928-021
P.O. Box 29779
Phoenix, AZ 85038

February 23, 2017

PWS5 LLC
4226 E BUENA TERRA WAY
PHOENIX AZ 85018-1103

Subject: Required withdrawal from your account ending in 7394
Wells Fargo case number: 16026417

Dear PWS5 LLC:

We want to let you know that on February 22, 2017, Wells Fargo was served with the legal order, in the amount of $3,493.53, which requires us by law to deduct money from your account. As a result, we withdrew $0.00 from your account on February 22, 2017 and charged a non-refundable processing fee of $125.00.

Account Number	XXXXXX7394
Debit Amount	$0.00
Bank Fee	$125.00

[Instructions about obtaining more information about legal order and signature block omitted]

[Wells Fargo logo]

Legal Order Processing S3928-021
P.O. Box 29779
Phoenix, AZ 85038

July 21, 2017

PWS5 LLC
4226 E BUENA TERRA WAY
PHOENIX AZ 85018-1103

Subject: Required withdrawal from your account ending in 7394
Wells Fargo case number: 68175817

Dear PWS5 LLC:

We want to let you know that on July 21, 2017, Wells Fargo was served with the legal order, in the amount of $3,588.76, which requires us by law to deduct money from your account. As a result, we withdrew $0.00 from your account on July 21, 2017 and charged a non-refundable processing fee of $125.00.

Account Number	XXXXXX7394
Debit Amount	$0.00
Bank Fee	$125.00

[Instructions about obtaining more information about legal order and signature block omitted]

[Wells Fargo logo]

Legal Order Processing S3928-021
P.O. Box 29779
Phoenix, AZ 85038

March 9, 2018

PWS5 LLC
4226 E BUENA TERRA WAY
PHOENIX AZ 85018-1103

Subject: Required withdrawal from your account ending in 7394
Wells Fargo case number: 23549818

Dear PWS5 LLC:

We want to let you know that on March 9, 2018, Wells Fargo was served with the legal order, in the amount of $3,669.47, which requires us by law to deduct money from your account. As a result, we withdrew $50.00 from your account on March 9, 2018 and charged a non-refundable processing fee of $0.00.

Account Number	XXXXXX7394
Debit Amount	$50.00
Bank Fee	$0.00

[Instructions about obtaining more information about legal order and signature block omitted]

Exhibit P

STATE OF CALIFORNIA
FRANCHISE TAX BOARD
PO BOX 942857
SACRAMENTO, CA 94257-2021

Notice Date: 06/06/18

ANNUAL NOTICE

PWS5 LLC CO SYNDER FAMILY TRUST UTA
4226 S BUENA TERRA WAY
PHOENIX, AZ 85018
USA

Account Number: 999900027936000
Taxable Year(s): 12/14, 12/13

Account Balance: **$3,651.20**

THIS NOTICE IS FOR INFORMATIONAL PURPOSES ONLY.

We are required by the Taxpayers' Bill of Rights (Section 21026 of the Revenue and Taxation Code) to send you an annual statement regarding your account.

This notice does not delay or change outstanding collection actions or payment agreements.

Our records show balances as indicated below. Your balance may include additional debts not reflected below, such as liabilities currently under appeal or protest. Also, your account may not reflect adjust-

ments, such as those resulting from a prior or pending bankruptcy.

If you have questions regarding your account or believe you do not owe this balance, call us at (888) 635-0494. Please have your supporting documents available.

SUMMARY OF BALANCE DUE

YEARS:	12/14
TAX:	$800.00
PENALTY:	$632.00
INTEREST:	$161.56
FEES:	$123.00
EST. CREDITS:	$0.00
PAYMENTS:	$0.00
TOTAL:	$1,716.56

YEARS:	12/13
TAX:	$800.00
PENALTY:	$632.00
INTEREST:	$207.64
FEES:	$345.00
EST. CREDITS:	$0.00
PAYMENTS:	$-50.00
TOTAL:	$1,934.64

RETURN(S) DUE:	**12/14, 12/13**
PAY THIS AMOUNT:	**$3,651.20**

Please see the enclosure for important information.

[Enclosures omitted]

Exhibit Q

[Seal of California]
STATE OF CALIFORNIA
FRANCHISE TAX BOARD
PO Box 942857
Sacramento CA 94257-2021
Telephone: (888) 635-0494

Notice Date: 08/29/16

LEGL 80715916

ORDER TO WITHHOLD TAX

WELLS FARGO BANK, N.A.
LEGAL PROCESSING MAC S3928-021
PO BOX 29779
PHOENIX AZ 85038-9779

Account Name: KWC HOLDINGS LLC CO COGHLIN WILHARDT LIVING TRUST DATED
DBA Name:
Account Number: 999900026347000
FEIN: 462890396000
Amount Due: $1,878.15
Taxable Year(s): 12/13

Limited Liability Company

You are required to deduct and withhold the amount shown above from any checking or savings accounts, certificates of deposit, funds in escrow, credit union share accounts, or any other credits or property belonging to the taxpayer. You are required to withhold the lesser of: (1) the amount due, or (2) the

amount in the taxpayer's account(s) at the time you receive this order.

We request that you take the following steps:

1. Notify the taxpayer, your depositor, that you are holding funds pursuant to our Order to Withhold tax.
2. Hold the attached funds for 10 business days from the date you receive this order.
3. Contact our office regarding special or unusual situations such as possible problems with regard to trustee and fiduciary accounts or certificates of deposit.
4. At the end of the holding period, remit the withheld funds to the Franchise Tax Board unless you received a release from this department.

Forward the amount withheld to the address shown above. The **remittance should be made payable to the Franchise Tax Board** and attached to the remittance copy of this order. If there are no funds to be withheld, there is less than the amount due or if you are holding a safe deposit box or any other property of the taxpayer, please indicate on the remittance copy. If you are not sending a payment, you can fax the rem tance copy to (916) 843-1077.

FAILURE TO WITHHOLD and remit the amount due may make you liable for the amount due.

YOU ARE NOT LIABLE to the taxpayer for any amounts that you are required to withhold and pay to this department. This order is made pursuant to

Sections 18670 and 18674 of the California Revenue and Taxation Code.

Thank you for your cooperation in this matter.

IMPORTANT
PLEASE GIVE THE "TAXPAYER COPY" OF THIS ORDER TO THE TAXPAYER AS SOON AS POSSIBLE.

Exhibit R

November 17, 2016
Attn:
Protest Section MS F340
Franchise Tax Board
PO Box 1286
Rancho Cordova Ca 95741-1286

CC:
Executive and Advocate Services MS A381
Franchise Tax Board
PO Box 157
Rancho Cordova CA 95741-0157

Re: Taxpayer Name: KWC Holdings, LLC
Taxpayer Address: 6102 E Montecito Ave, Scottsdale, AZ 85251-1936
Taxpayer ID Number:
Refund Period: 2013, 2014
Refund Amount: $1,878.15
Re: Protest of Impounded Funds

To Whom It May Concern:

This letter is in response to the attached Notice of Demand for Tax Return, Final Notice Before Contract Voidability, and Notice of Impounded Funds received by the above listed taxpayer ("Taxpayer"). RSM US LLP, as the duly appointed representative of Taxpayer, hereby protests the California Franchise Tax Board's imposition of the tax and penalties imposed upon Taxpayer and requests that the impounded funds be returned to Taxpayer.

Enclosed are the following documents relevant to Taxpayer's refund request:

- Attachment A: LLC Final Notice Before Levy
- Attachment B: Final Notice Before Contract Voidability
- Attachment C: Wells Fargo Notice of Impounded Funds
- Attachment D: Notice of Proposed Assessment – Tax Year 2014
- Attachment E: Form FTB 3520
- Attachment F: Innutra LLC Operating Agreement
- Attachment G: FTB Form 3705
- Attachment H: FTB Form 2518 – Application of Relief from Contract Voidability

The Franchise Tax Board Tax Advocate's Office has been carbon copied on this letter because Taxpayer requests an intervention on this matter and Taxpayer should be able to have protest rights without having their funds impounded. Taxpayer's funds were impounded despite Taxpayer's reasonable belief that it has no tax liability in the State of California and the State had no right to impound Taxpayer's funds. This position is supported by the authority outlined below and the trial court's opinion in the unpublished decision in *Swart Enterprises, Inc. v. California Franchise Tax Board*, Superior Court of California, Fresno County, No, 13CECG02171.[1]

For that reason, Taxpayer requests that any impounded funds taken from the Taxpayer for 2013 be returned while Taxpayer continues to protest the

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[1] See Swart Enterprises, Inc. v. California Franchise Tax Board, Superior Court of California, Fresno
County, No, 13CECG02171 (11/14/14)

assertion of the Franchise Tax Board that the Taxpayer was subject to tax for 2013 or later years.

Factual Background

Taxpayer asserts the following facts in support of its protest:

- Taxpayer is the owner of KWC Holdings, LLC, which is a member of Innutra LLC ("Innutra"), a manager-managed LLC registered in the State of Arizona.[2]
- Under the operation of the Operating Agreement, Taxpayer has no rights to appoint or remove any manager.[3]
- As shown in the ownership table below, Taxpayer does not represent a majority ownership in the limited liability company and therefore could not exercise control over any decision making processes or alter the rights they have either currently or on formation of the entity.[4]
- The Operating Agreement of Innutra bars any member from performing any act that would-subject any member to liability similar to that of a general partner. Therefore, because Taxpayer owns a minority interest in Innutra, they could not perform any action associated with the entity that would deem them to be a general partner.[5]

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[2] See Attachment F – Innutra LLC Operating Agreement at page 1.

[3] *Id.* at 1.01(Z)(2), 6.01(A)(1).

[4] *Id.* at Exhibit A.

[5] *Id.* at 6.05(A)

- Taxpayer was not involved in the daily operations of Innutra. Taxpayer intended to be and acted under the belief that they were merely a passive investor and had no management or operation authority. Taxpayer has a separate full time employment as President of 21st Century Healthcare, Inc.
- The Articles of Organization and the Operating Agreement for Innutra set forth the ability that managers of the LLC can exercise control over the business and operations of the entity. Specifically, Article 6 of the Innutra Operating Agreement provides, "The Board of Management shall have the sole and exclusive right to manage the [Innutra] business. Individual Managers shall have no individual authority except to the extent authority is expressly delegated to such Manager by proper act of the Board of Management."[6]
- Additionally, regarding the Managers of Innutra, Section 6.01(A)(1) provides, "The Board of Management shall consist of up to Three (3) Managers. The Number of Managers shall be fixed from time to time by the affirmative vote of a majority of the Voting Members, but in no instance shall there be less than One (1) Manager. Each Manager shall serve until such named Manager ceases to serve in such capacity by death, removal or resignation pursuant to this Section 6.01."[7]
- Section 6.01(A)(1) also provides that only the voting members can appoint a manager and

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[6] *Id.* at 6.01

[7] *Id.*

specifically states that the managers can only be appointed by Innutra, LLC (California), PWS5 LLC, and Innutra, LLC (Kansas).[8]

- Section 6.01(C) also provides, "A manager may be removed at any time, with or without Cause, only by the affirmative vote of the same Member(s) entitled to designate such Manager under Section 6.01(A)." As such, Taxpayer had no right to designate a Manager and no right to remove a Manager.[9]
- Section 9.01 provides the Managers and Board of Management the ability to amend the operating agreement and modify the Managers representations, duties or obligations without the consent of the nonvoting members.[10]
- The following reflects the ownership structure of Innutra[11]:

Series A Units

Innutra, LLC (California)	
Voting Interest:	Yes
Units Issued:	2,000,000
% of Units:	20.0%
PWS5 LLC	
Voting Interest:	Yes
Units Issued:	1,000,000
% of Units:	10.0%
Innutra, LLC (Kansas)	
Voting Interest:	Yes

---

[8] *Id.*

[9] *Id.*

[10] *Id.* at 9.01

[11] *Id.* at Exhibit A

Units Issued: 5,000,000
% of Units: 50.0%

Series A-1 Units*
KWC Holdings LLC*
Voting Interest: No
Units Issued: 1,000,000
% of Units: 10.0%

RES Buckeye Enterprises LLC*
Voting Interest: No
Units Issued: 500,000
% of Units: 5.0%

Kellynn IT LLC*
Voting Interest: No
Units Issued: 250,000
% of Units: 2.5%

Guardian Eagle Investments LLC*
Voting Interest: No
Units Issued: 250,000
% of Units: 2.5%

Incentive Units
N/A

Total
Units Issued: 10,000,000
% of Units: 100.0%
*Series A-1 Units are nonvoting.

On September 22, 2014, the State of California ("CA") Franchise Tax Board ("the FTB") issued Legal

Ruling 2014-01 ("LR 2014-01"), which determined that all members of an LLC "doing business" in CA will be treated as general partners, and therefore, will be said to be "doing business" in CA.[12]

On July 1, 2016, Taxpayer received an LLC Final Notice Before Levy, stating a balance due of $1,604.76 stemming from a failure to file a 2013 tax year return in California.[13] On July 7, 2016, the FTB issued a Final Notice Before Contract Voidability to Taxpayer.[14] The same day, Taxpayer received a notice from Wells Fargo Bank that it had impounded $1,878.15 from Taxpayer's bank account.[15] Further, on September 23, 2016, Taxpayer received a Notice of Proposed Assessment for the 2014 tax year.[16]

Taxpayer reasonably believed it was not subject to the CA filing requirements, and therefore did not respond to the Final Notice Before Levy. Further, Taxpayer does not have any contracts in the state of CA and thus did not respond to the Final Notice Before Contract Voidability. Taxpayer continues to assert that is was not subject to the CA filing requirements and requests that the impounded funds be returned. Further, Taxpayer requests that the FTB take no further action regarding the 2014 tax year until Taxpayer has had a meaningful opportunity to protest these assessments.

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[12] State of California Franchise Tax Board Legal Ruling 2014-01

[13] See Attachment A – LLC Final Notice Before Levy

[14] See Attachment B – Final Notice Before Contract Voidability

[15] See Attachment C – Notice of Impounded Funds

[16] See Attachment D – Notice of Proposed Assessment

[Legal Argument Omitted]

Conclusion

Based on the authority outlined above, Taxpayer should not be subjected to the CA filing requirements by virtue of his/her status as a member in a manager-managed LLC. Taxpayer had no right to control the conduct of the LLC business, and therefore cannot be said to be "doing business" in CA. As such, Taxpayer requests that the impounded funds be returned and that Taxpayer be released of any tax liability in the State of California.

We reserve the right to provide additional documentation and propose additional arguments supporting Taxpayer's position at a later time. We sincerely appreciate your consideration of this matter. If you have any questions or concerns, please contact me by phone at (602) 636-6019 or email at james.barash@rsmus.com.

Sincerely,
RSM US LLP
James I. Barash

Cc: Franchise Tax Board Tax Advocate Bureau
Enc:
Attachment A: LLC Final Notice Before Levy
Attachment B: Final Notice Before Contract Voidability
Attachment C: Wells Fargo Notice of Impounded Funds
Attachment D: Notice of Proposed Assessment
Attachment E: FTB Form 3520

Attachment F: Innutra LLC Operating Agreement
Attachment G: FTB Form 3705
Attachment H: FTB Form 2518

ATTACHMENT A

STATE OF CALIFORNIA
FRANCHISE TAX BOARD
PO BOX 942857
SACRAMENTO, CA 94257-2021
Telephone: (888) 635-0494

Notice Date: 07/01/16

LLC FINAL NOTICE BEFORE LEVY

KWC HOLDINGS LLC CO COGHLIN WILHARD
6102 E MONTECITO AVE
SCOTTSDALE AZ 85251-1936

SOS Number:	999900026347000
FEIN:	462890396000
Tax Year(s):	12/13
Balance Due:	**$1,604.76**
Final Date for Payment:	**07/16/16**

Return this part with your payment. ↑
Keep this part for your records. ↓

LLC FINAL NOTICE BEFORE LEVY

Notice Date:	07/01/16
Taxable Year(s):	12/13
SOS Number:	999900026347000
FEIN:	462890396000
Balance Due:	$1,604.76
Final Date for Payment:	07/16/16

This is your final notice before levy. If you do not pay this balance immediately, we can begin collection actions without further notice to you. Partial payment will not stop collection action. You must also file all tax returns noted below and pay the related tax, penalties, fees, and interest.

If you do not comply, we may take the following collection actions:

- Impose a $226.00 collection fee. The amount of the fee may change without further notice based on legislative requirements.
- File liens against company property.
- Attach company accounts receivable and bank accounts.
- Contact third parties.
- Suspend or forfeit the company's rights, powers, and privileges.
- Issue warrants to seize and sell company property.

YOU MUST PAY THE FULL AMOUNT DUE BY 07/16/16 TO AVOID ADDITIONAL INTEREST AND PENALTIES.

Please make your check or money order payable to Franchise Tax Board and mail it to: FRANCHISE TAX BOARD, PO Box 942857 Sacramento CA 94257-0611. To ensure proper credit to your account, please write your limited liability company name, Secretary of State (SOS) number, and FEIN on the front of your payment, and return it with the top part of this notice.

If you write to us, please include the name, address, and daytime telephone number of an authorized person whom we may contact if we need additional-information regarding the limited liability company.
If we do not receive payment in full within 30 days of the date of this notice, **a state tax lien may be filed** against your property per Government Code section 7171.

SUMMARY OF BALANCE DUE

YEARS:	12/13
TAX:	$800.00
PENALTY:	$632.00
INTEREST:	$93.76
FEES:	$79.00
EST. CREDITS:	$0.00
PAYMENTS:	$0.00
TOTAL:	$1,604.76

RETURN(S) DUE:	**12/13**
PAY THIS AMOUNT:	**$1,604.76**

Please see the enclosure for important information.

[Enclosures omitted]

ATTACHMENT B

[Enclosure omitted]

ATTACHMENT C

[Wells Fargo logo]

Legal Order Processing S3928-021
P.O. Box 29779
Phoenix, AZ 85038

September 7, 2016

KWC HOLDINGS LLC
6102 E MONTECITO AVE
SCOTTSDALE AZ 85251-1936

Subject: Required withdrawal from your account ending in 7386
Wells Fargo case number: 80715916

Dear KWC HOLDINGS LLC:

We want to let you know that on September 7, 2016, Wells Fargo was served with the legal order, in the amount of $1,878.15, which requires us by law to deduct money from your account. As a result, we withdrew $1,878.15 from your account on September 7, 2016 and charged a non-refundable processing fee of $125.00.

Account Number	XXXXXX7386
Debit Amount	$1,878.15
Bank Fee	$125.00

[Instructions about obtaining more information about legal order and signature block omitted]

ATTACHMENT D

STATE OF CALIFORNIA
FILING ENFORCEMENT SECTION MS F180
FRANCHISE TAX BOARD
PO BOX 942857
SACRAMENTO, CA 94257-0021

Notice of Proposed Assessment

Notice Number:	01-2074170-092316
Notice Date:	09/23/2016
Entity ID:	999900026347
Code Number:	49
NPA Number:	00576962
Revenue Code:	2008225
Amount:	$1,573.80

KWC HOLDINGS LLC CO COGHLIN WILHARD LIV
6102 E MONTECITO AVE
SCOTTSDALE AZ 85251-1936

We sent you a notice on **05/24/2016** indicating that we have no record that a **2014** California business entity tax return was filed under the account name and/or entity number listed above. We asked you to do one of the following by: **07/27/2016**

- File a **2014** California business entity tax return.
- Send us a copy of the previously filed tax return.
- Explain why you do not have a requirement to file a **2014** California business entity tax return.

We have neither a record of your tax return nor information that would indicate you do not have a filing requirement. We based this *Notice of Proposed Assessment* on your available income information.

This is a proposed assessment. It is not a tax bill.

Filing a tax return may reduce your tax liability and ensure that you receive full credit for payments, and any other credits and deductions that you have a right to claim.

Total income for fee purposes (as estimated)	$
AnnualTax	$800.00
LLC Fee	$
Less payments and credits	-
Delinquent penalty	+
Underpayment penalty	+
Monthly penalty to: 09/23/2016	+
Demand penalty	+200.00
Late filing penalty	+432.00
Nonqualified, suspended, or forfeited penalty	+
Filing enforcement fee	+81.00
Interest to: 09/23/2016	+60.80
Total Tax, Penalties, Interest & Fees	**$1,573.80**

You will pay no additional interest if we receive your payment within 15 days of the date we mailed this notice. The proposed assessment will be due and payable on **November 23, 2016**, unless we receive your tax return or a protest of the proposed assessment prior to this date.

If you have a California filing requirement, you must file a tax return and pay the tax on the tax return plus any applicable penalties and/or interest. After FTB processes the tax return, you will be informed of any balance due. If you believe this notice is incorrect, follow the enclosed protest procedures. Mail your protest by **November 22, 2016.**
We may provide the information contained in this notice to the Internal Revenue Service.

[Quick Resolution Worksheet and general information about protest and payment procedures, and fees and penalties for failure to pay in full omitted]

[ATTACHMENTS E-H Omitted]

NO. _____, ORIG

In the Supreme Court of the United States

STATE OF ARIZONA,
Plaintiff,

v.

STATE OF CALIFORNIA,
Defendant.

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE A BILL OF COMPLAINT

MARK BRNOVICH
ATTORNEY GENERAL

ORAMEL H. (O.H.) SKINNER
Solicitor General
DREW C. ENSIGN
Counsel of Record
BRUNN (BEAU) W. ROYSDEN III
ANTHONY R. NAPOLITANO
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Counsel for State of Arizona

QUESTIONS PRESENTED

California imposes a "doing business" tax on business entities that have no connection to California whatsoever except for purely passive investment in California companies ("Extraterritorial Assessments"). If those taxes are not paid voluntarily, California frequently seizes moneys in out-of-state bank accounts by issuing orders to interstate banks demanding that they transfer the out-of-state funds to California ("Extraterritorial Seizures"). Those Extraterritorial Seizure orders are issued *ex parte*, without any warrant or judicial involvement, without any requirement of probable cause, and expressly preclude banks from seeking judicial review.

This Court has previously held that (1) purely passive investment in a company organized under another state's law is not sufficient "minimum contacts" to support personal jurisdiction, (2) states' power to tax out-of-state businesses is restricted *inter alia* by a substantially equivalent "minimum contacts" standard, and (3) states may not exercise *quasi-in-rem* jurisdiction without satisfying the "minimum contacts" standard. *See Shaffer v. Heitner*, 433 U.S. 186 (1977); *South Dakota v. Wayfair, Inc.*, 138 S.Ct. 2080 (2018).

The questions presented are:

(1) Do California's Extraterritorial Assessments violate (a) the Due Process Clause or (b) the Commerce Clause?

(2) Do California's Extraterritorial Seizures violate (a) the Due Process Clause or (b) the Fourth Amendment?

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BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE A COMPLAINT

The State of Arizona submits this brief in support of its Motion for Leave to File a Bill of Complaint.

STATEMENT OF JURISDICTION

The Court has jurisdiction over this original action between states pursuant to Article III, §2, cl. 2 of the U.S. Constitution and 28 U.S.C. §1251(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant texts of the Commerce Clause, Fourth and Fourteenth Amendments, and pertinent statutory provisions are set forth in the appendix.

INTRODUCTION

This is a challenge to California's aggressive policy of extraterritorial taxation, which transgresses both state borders and multiple provisions of the Constitution. California imposes an $800-minimum "doing business" tax on business entities. California assesses this "doing business" tax expansively—so broadly that it taxes out-of-state companies that do not conduct any actual business in California, and indeed have no connection to the state except for purely passive investment in companies doing business in California (hereinafter, "Extraterritorial Assessments"). And if California's Extraterritorial Assessments are not paid voluntarily, California collects those taxes by further incursions into her sister states. Specifically, the California Franchise Tax Board ("Tax Board") locates moneys in out-of-state bank accounts for the pertinent companies and

sends relevant banks offers-they-can't-refuse: transfer the funds to us or we will extract the same amounts from the banks' accounts instead (hereinafter, "Extraterritorial Seizures"). Those seizure demands are issued *ex parte*, without any warrant or judicial involvement, and expressly preclude banks from seeking judicial review. And California neither seeks the consent of the state from which the moneys are seized nor provides them notice of the seizure.

California's actions violate (1) the Due Process Clause, (2) the Commerce Clause, and (3) the Fourth Amendment. These violations are flagrant and palpable under this Court's precedents.

California's Extraterritorial Assessments and Extraterritorial Seizures present patent Due Process violations. *First*, purely passive investments in California companies are an insufficient basis to impose taxes because the requisite "minimum contacts" over those out-of-state businesses are lacking. *See Shaffer v. Heitner*, 433 U.S. 186 (1977); *see also South Dakota v. Wayfair, Inc.*, 138 S.Ct. 2080, 2093 (2018) (due process limitations on taxation closely track personal jurisdiction limitations). *Second*, because California lacks personal jurisdiction over/"minimum contacts" with the companies it seeks to tax and the moneys in out-of-state accounts, California cannot exercise either *in personam* or *in rem* jurisdiction that could effectuate the Extraterritorial Seizures; instead, those seizures are lawless under the Fourteenth Amendment.

Similarly, California's Extraterritorial Assessments violate the Commerce Clause. This Court has imposed four independent requirements for out-of-state taxation under *Complete Auto Transit, Inc. v.*

Brady, 430 U.S. 274, 279 (1977). The Extraterritorial Assessments impressively manage to violate *all four*—a dubious distinction likely unmatched by any tax ever before reviewed by this Court.

California's Extraterritorial Seizures also violate the Fourth Amendment, since they (1) are issued without either a warrant or *any* other judicial involvement, (2) are unreasonable seizures, and (3) are an unreasonable exercise of California's sovereign power outside its territory—where it has no police power to effectuate extra-judicial seizures *at all* absent the consent of the transgressed state.

California's Extraterritorial Assessments and Seizures are thus unjustifiable—and unconstitutional—violations of the sovereignty of her sister states. In essence, California is effectively exercising its taxing and police powers directly in Arizona as if the Colorado River had been shifted 300 miles to the east. This suit seeks to end these intolerable encroachments upon Arizona's sovereignty and terminate California taxmen's extraterritorial expeditions.

Granting leave is thus an entirely appropriate exercise of this Court's original jurisdiction given "'the seriousness and dignity of the claim[s]" presented. *Illinois v. City of Milwaukee*, 406 U.S. 91, 93 (1972). That is particularly true as these claims here "'implicate[] serious and important concerns of federalism.'" *Wyoming v. Oklahoma*, 502 U.S. 437, 451 (1992) (citation omitted).

Exercise of this Court's original jurisdiction is also warranted by the lack of any alternative forum that can adjudicate all of the issues presented and provide full relief. This Court's jurisdiction over

disputes between states is exclusive, thereby preventing any other court from hearing this suit. *See* 28 U.S.C. §1251(a). The Tax Injunction Act, 26 U.S.C. §7421, may also substantially constrain the authority of any federal district court to award full relief. And California's sovereign immunity would preclude any award of retrospective relief in federal district court, but does not apply here.

Nor are individual-company refund actions in California state court an adequate alternative. Among other problems: (1) requiring individuals to file suit in California state courts merely perpetuates the due process/lack of personal jurisdiction violations at issue, (2) individual businesses cannot adequately assert or vindicate the State's sovereign interests, and (3) the low-dollar amount of the $800 tax is an insufficient incentive for taxed entities to litigate these issues fully.

For all of these reasons, this Court should grant this motion for leave to file a complaint.

BACKGROUND

Because this case involves taxation of companies that invest in limited liability companies ("LLCs") doing business in California, it is useful to provide a background on LLCs and California's associated tax statutes and policies.

Limited Liability Companies (LLCs)

Under California law, "A limited liability company is a hybrid business entity formed under the Corporations Code" and "consists of at least two members who own membership interests." *People v. Pac. Landmark, LLC*, 129 Cal. App. 4th 1203, 1211-

12 (2005) (cleaned up). LLC members "are not personally liable … 'solely by reason of being a member.'" *Id.* at 1212 (citation omitted).

LLCs come in two varieties: member-managed and manager-managed. *Id.* In the former variety, the members "actively participate in the management and control of the company[.]" *Id.* (cleaned up).

In a manager-managed LLC, however, "any matter relating to the activities of the limited liability company is decided exclusively by the managers." Cal. Corp. Code §17704.07(c)(1). "While LLC members have the ability to remove the manager with a majority vote, they have no right to control the management and conduct of the LLC's activities[.]" *Swart Enterprises, Inc. v. Franchise Tax Bd.*, 7 Cal. App. 5th 497, 510 (2017) (citations omitted).

California "Doing Business" Tax

California imposes a "doing business" tax on LLCs, LLPs, and corporations that are "doing business" in California. Cal. Rev. & Tax. Code §17941 (LLCs); *id.* §17948 (LLPs); *id.* §23153(b)(3) (corporations). "Doing business" is defined by California Revenue & Tax Code Section 23101(a) as "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit." That section further provides that "a taxpayer is doing business in this state" if the taxpayer satisfies "any" of four conditions, including (1) being domiciled in California, or exceeding any of specified amounts for (2) gross "sales" in California, (3) ownership of "real property and tangible personal property" located in the state, or (4) payment of "compensation" in California. *Id.* §23101(b).

With the exception of mining companies, LLCs and LLPs "doing business" in California must pay a flat $800 annually. *Id.* §§17941(a), 17948(a), 23153(d). Corporations pay the greater amount of $800 or a percentage of their net income. *Id.* §§23151, 25153. LLCs with in-state income exceeding $250,000 are also required to pay a separate "[a]nnual fee based on total income[.]" *Id.* §17942(a).

California Tax Board's Interpretation

The California Franchise Tax Board is charged with enforcing California's tax code, including the "doing business" tax. The Tax Board has consistently taken an expansive view of what constitutes "doing business" in California. The Tax Board has set forth its official interpretation of what constitutes "doing business" in its Legal Ruling 2014-01, which is included as Complaint Exhibit A.

The Tax Board originally took the position that all "partners of a partnership are 'doing business' in California if the partnership is 'doing business' in California," even if they were limited partners who "do not have the power to manage and conduct partnership business." Ex. A at 8-9. The California Board of Equalization struck down this interpretation in 1996, however, because limited partners do not have "the right to manage or control the decision making process of the entity." *Id.* at 9.

Notwithstanding the Board of Equalization's binding interpretation, the Tax Board has continued to take the position that a company's mere ownership interest in an LLC doing business in California by itself constitutes "doing business" in California. The Tax Board has codified that position in a formal

legal ruling, Legal Ruling 2014-01, which explains that the $800 tax is owed even if the out-of-state business "is not incorporated, organized, or registered to do business in California and has no activities or factor presence in California other than through its membership in [the] LLC[.]" *Id.* at 17-18.[1] Thus, under Legal Ruling 2014-01, both the LLC actually doing business in California and all out-of-state companies that invest in that LLC would each be required to pay the $800-minimum tax. *Id.*

The Tax Board's Legal Ruling 2014-01 makes clear that the $800-minimum tax applies even to manager-managed LLCs, where the LLC members are purely passive investors. It explains that "[t]he distinction between 'manager-managed' LLCs and 'member-managed' LLCs is not relevant for purposes of determining whether members of an LLC … are 'doing business' in California[.]" *Id.* at 18. Thus members of manager-managed LLCs must pay the "doing business" tax even if they "ha[ve] no activities or factor presence in California other than through [their] membership in [the] LLC." *Id.* at 17-18. Each of the Tax Board's specific examples involve corporations, although the legal ruling explains that "[t]his same analysis is applicable to any other business entity that is subject to … [the] 'doing business' [tax] in California," such as LLCs. *Id.* at 21 n.34.

Swart *Decision*

The Tax Board's interpretation has been challenged in California state courts by a corporation

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[1] This description applies to LLCs that elect to be taxed as partnerships for federal purposes, which the vast majority of LLCs do. Complaint ¶37.

that was subject to an Extraterritorial Assessment. In *Swart*, the Tax Board assessed the "doing business" tax against a corporation (Swart Enterprises) whose only connection to California was a "0.2 percent ownership interest in a manager-managed [LLC]." 7 Cal. App. 5th 497, 500 (2017). Swart challenged the tax assessment on statutory and constitutional grounds.

The California Court of Appeal concluded that Swart was "not doing business in California based solely on its minority ownership interest in [the] LLC" operating in California. *Id.* at 513. The Court therefore declined to reach the constitutional challenges. *Id.* at 513-14.

The Tax Board elected not to appeal *Swart* to the California Supreme Court. Instead, it announced in a formal notice (2017-01) that it would putatively accept the *Swart* decision, but only in cases with essentially identical facts. *See* Complaint Ex. B, *available at* https://tinyurl.com/ya6krqyy (explaining that the Tax Board "will follow … *Swart* in situations *with the same facts*," and reiterating "*the same facts* as in *Swart*" standard twice (emphasis added)).

The Tax Board has amended Legal Ruling 2014-01 to codify the same-facts-as-*Swart* exception, but otherwise made no other changes. *See* Complaint Ex. C. It has also elected to continue to pursue collection of a "doing business" tax against other businesses with similar (but not identical) facts, including Arizona-based LLCs with ownership stakes ranging from 2.5-10% in a manager-managed LLC. Complaint ¶¶71-72. The Tax Board's denial of a refund in those cases used a form letter and check-the-box format, making plain that the Tax Board's

policy is to limit *Swart* solely to its narrow facts. Complaint Exs. D-E.

Extraterritorial Enforcement

If the Tax Board's Extraterritorial Assessments are not paid voluntarily by the out-of-state businesses, the Tax Board assesses a penalty and then seeks collection through other means.

The Tax Board typically does not utilize California state courts to collect the Extraterritorial Assessments it believes are owed (and California courts would lack personal jurisdiction to hear such claims, *see infra* Section III.A). Instead, the Tax Board relies on special authority conferred by the California legislature.

The relevant statutory provisions permit the Tax Board to issue "notice[s], served personally or by first-class mail" that "require any employer [or] person" to "withhold … the amount of any tax, interest, or penalties due from the taxpayer … [and] transmit the amount withheld to the Franchise Tax Board" (hereinafter, "Seizure Orders"). Cal. Rev. & Tax. Code §18670(a). The provision requires, if necessary, the recipient of the Seizure Order to "liquidate the financial asset [in the account] in a commercially reasonable manner[.]" *Id.* §18670(c)(1).

If the bank or other recipient of a Seizure Order does not comply with the order and transfer the funds, the bank or other recipient is "liable for those amounts" to California. *Id.* §18670(d).

The Tax Board may also serve by "electronic transmission" similar Seizure Orders on "any depository institution." *Id.* §18670.5(a). Such notices may

be issued by the Tax Board "in its sole discretion" whenever it "has reason to believe [a bank] may have in its possession, or under its control, any ... things of value, belonging to a taxpayer" that, in the Tax Board's view, owes any "tax, interest, or penalties." *Id.*

California law expressly bars any judicial challenge to the validity of Seizure Orders by the recipients. Instead, such notices mandate that the recipients "shall comply with the [Seizure Order] without resort to any legal or equitable action in a court of law or equity." *Id.* §18674(a). And California law purports to immunize the transferor from any liability, providing that it "is not liable therefor to the person from whom withheld." *Id.*

California law does not require the Tax Board to obtain any judicial approval of its Seizure Orders, either from a judge or magistrate. *Id.* §§18670, 18670.5, 18674. California law also does not require any finding of probable cause. Instead, the Tax Board may issue Seizure Orders electronically "in its sole discretion." *Id.* §18670.5.

Nothing in Sections 18670 and 18670.5 limit the Tax Board's authority to issue Seizure Orders to in-state recipients. Nor do those sections limit seizures only to monies and properties that are located in California. California can and does issue Seizure Orders to multi-state banks requiring that they transfer moneys in out-of-state accounts (*i.e.*, Extra-territorial Seizures). An example of such a Seizure Order is Complaint Exhibit Q.

Hypothetical Example

To put California's tax policies in perspective, it is useful to provide a hypothetical example. Suppose 50 investors open a Burger King franchise as a manager-managed LLC under California law. Suppose further those investors consisted of (A) 10 California LLCs owning 7.8% each, (B) 20 Arizona LLCs owning 1% each, (C) 10 Arizona corporations owning 0.1% each from inception of the LLC, and (D) 10 Arizona LLCs owning 0.1% each that acquired their interest from the original investors. Group A, the California LLCs, already pays the $800 "doing business" tax and would not face any marginal tax for investing in the Burger King. Group D would not pay because its members satisfy all relevant aspects of *Swart*. Complaint Ex. B. But members of Groups B and C would each pay the "doing business" tax because (1) they own more than 0.2%, and (2) they were among the original LLC members, respectively. California would thus collect the $800 doing business tax from both the Burger King LLC and 30 Arizona investors (for a total of $24,800 annually).

Assessments And Seizures in Arizona

California has effectuated both Extraterritorial Assessments and Seizures in Arizona. The Complaint specifically discusses such concrete applications against Arizona businesses. Complaint ¶¶73-115. In particular, three Arizona LLCs invested in another LLC, which was manager-managed and conducted business in California ("California-Operating LLC"). Complaint ¶¶68-69. Those Arizona LLCs' purely passive investments in the California-Operating LLC ranged from 2.5% to 10%, and

none of them participated in the LLC's management. Complaint ¶¶73-115.

California not only assessed its $800 "doing business" tax against the California-Operating LLC, but also all three Arizona LLCs individually. Complaint ¶¶73-115. The Tax Board issued Seizure Orders regarding two of the LLCs to Wells Fargo on August 29 and December 7, 2016. Complaint Exs. O, Q. Those orders demanded that the bank transfer $1,878.15 and $1,889.89 to California (consisting of two annual $800 "doing business" taxes and associated penalties and fees). *Id.* Those funds were held in Arizona-based bank accounts governed by the laws of Arizona (and federal law). *See Baldwin v. Missouri*, 281 U.S. 586, 591 (1930) ("[B]ank deposits … have situs at the domicile of the creditor only."). However, faced with the threat that California would extract the amounts from it instead, Wells Fargo acceded to California's demand, as it has for nearly all such Seizure Orders. Complaint ¶99.

Two LLCs elected to challenge the assessment administratively. Complaint ¶¶101, 111. On August 23, 2018, California denied requests for refunds by the two Arizona LLCs on the basis that they "did not meet one or more of the [key] facts as per the Swart decision." Complaint Exs. D & E. Those LLCs' challenges are now pending before the Tax Board's Office of Tax Appeals. Complaint ¶¶104, 115.

Another of the LLCs, elected not to respond to the Extraterritorial Seizures. Because of insufficient funds in its targeted account, the Tax Board has continued to issue new and continually increasing Seizure Orders, with the most recent issued on March 9, 2018 for $3,669.47. Complaint Ex. O at 4.

Because California's Extraterritorial Assessments and Seizures in Arizona continue to this day, Arizona now seeks leave to file an original action challenging those assessments and seizures.

ARGUMENT

Although this Court has interpreted its original jurisdiction over disputes between states to be discretionary, this case amply warrants a favorable exercise of discretion. Both of the criteria that this Court traditionally examines are plainly satisfied here. First, the "nature of the interest of the complaining State," including the "seriousness and dignity of the claim[s]" strongly militates in favor of accepting jurisdiction. *Mississippi v. Louisiana*, 506 U.S. 73, 77 (1992). California's actions strike at the heart of Arizona's sovereignty within its own borders and rights within the federal system under the U.S. Constitution. This is precisely the sort of controversy for which this Court's original jurisdiction was designed by the Founders.

Second, there is no "alternative forum in which the issue[s] tendered can be resolved," *id.*, and "full relief" obtained. *Wyoming v. Oklahoma*, 502 U.S. 437, 452 (1992). This Court's exclusive jurisdiction over disputes between States, sovereign immunity, and the Tax Injunction Act all stand as significant obstacles to Arizona securing full consideration and relief for its claims.

Accepting jurisdiction here is further warranted by the clarity of the constitutional violations at issue. As explained below, California's Extraterritorial Assessments and Seizures violate the Due Process Clause, the Commerce Clause, and the Fourth

Amendment. All of these violations underscore the seriousness of the claims here, and the grave effects on Arizona's dignity within the federal system.

For all of these reasons, this Court should grant Arizona's Motion for Leave to File a Complaint.

I. THE SERIOUSNESS AND DIGNITY OF ARIZONA'S CLAIMS WARRANT ACCEPTING JURISDICTION

In considering whether jurisdiction is appropriate, this Court focuses on "the nature of the interest of the complaining State," and "the seriousness and dignity of the claim[s]" raised. *Mississippi v. Louisiana*, 506 U.S. at 77. Those factors plainly support accepting jurisdiction here because: (1) this case is one paradigmatically suited for this Court's original jurisdiction, (2) there are multiple types of cognizable injury inflicted on Arizona, implicating a variety of sovereign, proprietary, and quasi-sovereign interests, and (3) California's actions in other contexts make plain that its failure to respect the boundaries and sovereignty of Arizona here is indicative, not aberrational.

A. This Case Is A Paradigmatic Suit Between States Warranting This Court's Exercise Of Jurisdiction

This suit falls comfortably within both the core purposes of this Court's original jurisdiction over disputes between states and the prior types of cases in which Court has exercised that jurisdiction.

This Court has explained, for example, that "'[t]he model case for invocation of this Court's original jurisdiction is a dispute between States of such

seriousness that it would amount to *casus belli* if the States were fully sovereign.'" *Id.* at 77 (citation omitted).

Here, California's actions easily satisfy this standard: its continual cross-border incursions into Arizona for purposes of taxing its residents and seizing their property without resort to Arizona (or California) courts constitute perpetual, low-grade incursions. Notably, incursions into *disputed* territory have frequently been *casus belli*. And in this case there can be no doubt either that (1) California's sovereignty is *supposed* to end at the Colorado River and (2) California is unwilling to accept that demarcation for its sovereign taxing and police powers.

California's actions effectively amount to cross-state bank heists poorly masked by a thin veneer of non-judicial "process." The seized Arizona-based deposits rightfully belong to the Arizona residents under Arizona law. California does not seek any judicial determination that it is the rightful owner of those funds, and certainly does not do so in any court that has jurisdiction over the account holders or the moneys at issue—any judgment from which Arizona would readily accept under the Full Faith and Credit Clause. But California has no interest in such legal niceties.

Instead, California invokes the terrifying specter of its regulatory power to coerce multi-state banks into acquiescing in its non-judicial, lawless seizures. That threat almost invariably yields compliance by the banks, who hand over moneys rightfully belonging to the account holders under Arizona law. Indeed, California's Seizure Orders—carrying the implied threat of the awesome power of California's

regulatory leviathan—are *at least* as effective as (and likely more so than) California sending armed troops into Arizona banks to seize the funds directly. *See also Arkansas v. Delaware*, 137 S.Ct. 535 (2016) (granting leave to file original action where Arkansas and other states alleged that Delaware was wrongfully seizing moneys that belonged to plaintiff states).

More generally, this Court has held that it was "beyond peradventure" that a dispute between states involving alleged violations of the Commerce Clause "raised a claim of sufficient 'seriousness and dignity.'" *Wyoming v. Oklahoma*, 502 U.S. at 440, 451. And much like that case, California's actions here "directly affect[] [Arizona's] ability to collect … tax revenues," *id.*, since the "doing business" taxes imposed by California are ultimately deducted as business expenses from the taxable income of Arizona taxpayers. Complaint ¶66.

This case also bears strong resemblance to *Maryland v. Louisiana*, where this Court exercised jurisdiction over a challenge to a Louisiana tax that "unquestionably discriminate[d] against interstate commerce in favor of local interests." 451 U.S. 725, 756 (1981). As explained below, California's Extraterritorial Assessments similarly discriminate against out-of-state businesses, as well as creating a host of other constitutional violations. *See infra* Section III.B.3.

Because this case falls within the heartland of this Court's original-action jurisprudence, a grant of leave is warranted here.

B. The Injuries To Arizona's Interests Are Severe And Multi-Faceted

The seriousness and dignity of Arizona's claims is also underscored by the fact that California's constitutional violations inflict five distinct forms of injury on Arizona that this Court has previously recognized.

First, California's incursions into Arizona's sovereign territory violate Arizona's "sovereign interests" in "maintenance and recognition of [its] borders." *Alfred L. Snapp & Son, Inc. v. Puerto Rico ("Snapp")*, 458 U.S. 592, 601 (1982). By effectively treating Arizona's territory as its own in exercising its taxing and police powers, California has infringed Arizona's sovereign interest in recognition of its borders.

Second, California's actions frustrate Arizona's ability to "exercise … sovereign power over individuals and entities within" its borders, thereby further injuring Arizona's sovereign interests. *Id.* In particular, Arizona's ability to regulate banks located in its borders—including proper protection of in-state deposits belonging to Arizona's residents—is severely hampered by California's unilateral seizures of those funds. Absent this Court's intervention, Arizona could be relegated to the status of hapless witness to the ongoing theft of bank deposits within its own borders.

Third, California's actions inflict proprietary harm to Arizona's treasury by converting otherwise-taxable income into a non-taxable deduction. *See*, *e.g.*, *Wyoming v. Oklahoma*, 502 U.S. at 447. Indeed, Arizona estimates that California's Extraterritorial Assessments cost it approximately $484,000 per year in lost tax revenue. Complaint ¶66.

Fourth, California's constitutional violations injure Arizona's "quasi-sovereign interest in not being discriminatorily denied its rightful status within the federal system," as well as its related "interest, independent of the benefits that might accrue to any particular individual, in assuring that the benefits of the federal system are not denied to its general population." *Snapp*, 458 U.S. at 607, 608. By directly exercising its sovereign taxing and police powers in Arizona without following any of the constitutional methods for doing so (*e.g.*, obtaining a judgment from a court with personal jurisdiction to which full faith and credit would attach), California has denied Arizona its "rightful status within the federal system." That injury is further exacerbated by California discriminatorily burdening Arizona residents' ability to invest in California businesses.

Fifth, California's actions directly implicate Arizona's "quasi-sovereign interest in the health and well-being—both physical and economic—of its residents in general." *Id.* at 607. By wrongfully seizing moneys that rightfully belong to Arizona residents—to the tune of about $10 million per year, Complaint ¶65—and violating their constitutional rights, California's actions deeply frustrate Arizona's ability to protect its citizens' well-being.

C. California's Disregard For Her Sister States' Sovereignty In Other Contexts Highlights The Need For Exercising Jurisdiction Here

California's actions here are sadly all-too consistent with its general willingness to leverage its disproportionate size and power to violate the borders and sovereignty of her sister states. Indeed, the

Extraterritorial Assessments and Seizures are part of a pattern of relentless encroachments that underscores the appropriateness of accepting jurisdiction here. Three examples bear particular emphasis.

First, California's Tax Board has shown a remarkable willingness to operate brazenly and shamelessly in other states. For example, this Court has observed that Tax Board employees conducting an audit crossed state lines into Nevada and engaged in astonishingly inappropriate (and warrantless) conduct, including "rifling through [the taxpayer's] private mail, combing through his garbage, and examining private activities at his place of worship." *Franchise Tax Bd. of California v. Hyatt*, 136 S.Ct. 1277, 1280 (2016). Its employees were further alleged to have "peered through [his] windows, rummaged around in his garbage … and shared his personal information not only with newspapers but also with his business contacts and even his place of worship." *Id.* at 1284 (Roberts, C.J., dissenting). That willingness to conduct audacious investigatory activities in *other states* underscores the Tax Board's lack of respect for sovereign borders.

Second, as several other states have explained in greater detail, California has similarly flouted state borders by authorizing its agricultural inspectors to enter into other states and investigate compliance with its egg-production standards, without seeking the consent of the relevant state—and, in many cases, over their vociferous objections. *See* Reply Brief at 6, *Missouri v. California*, No. 148, Orig. (U.S. March 20, 2018). Indeed, the relevant California regulations appear to authorize *extraterritorial,*

warrantless inspections, and penalize non-compliance up to $10,000. *See* Complaint ¶¶123-27.

Third, this Court has recently reversed California's attempt to expand drastically the jurisdiction of its courts beyond its borders by vitiating limitations of personal jurisdiction. By a lopsided 8-1 majority, this Court explained that California's reliance on "a loose and spurious form of general jurisdiction" violated due process where the "relevant plaintiffs [we]re not California residents and d[id] not claim to have suffered harm in that State." *Bristol-Myers Squibb Co. v. Superior Court*, 137 S.Ct. 1773, 1781-82 (2017). As explained below, California's Extraterritorial Assessments and Seizures are similarly impossible to reconcile with this Court's due process/personal jurisdiction precedents.

II. NO ADEQUATE ALTERNATIVE FORUM IS AVAILABLE HERE

In evaluating whether to exercise original jurisdiction, this Court also "explore[s] the availability of an alternative forum in which the issue tendered can be resolved." *Mississippi*, 506 U.S. at 77. No such alternative forum exists here, underscoring the need for this Court to accept jurisdiction.

As an initial matter, this Court's jurisdiction over disputes between states is *exclusive*, a restriction that this Court has applied strictly. *Id.* Thus, any suggestion that another court could hear this specific dispute "founders on the uncompromising language of 28 U.S.C. §1251(a), which gives to this Court 'original and *exclusive* jurisdiction of all controversies between two or more States.'" *Id.*

But even absent that exclusivity, federal district courts still would not be an adequate alternative forum here. Such a suit could not be brought against California directly, which would enjoy sovereign immunity. *See*, *e.g.*, *Alden v. Maine*, 527 U.S. 706, 713 (1999). No such immunity exists in this Court, however. *Texas v. New Mexico*, 482 U.S. 124, 130 (1987).

Assuming Arizona could bring an action against the Tax Board in district court, substantial obstacles would remain. In particular, the Tax Injunction Act, which generally prohibits "district courts" from "enjoin[ing], suspend[ing] or restrain[ing] the assessment, levy or collection of any tax under State law," 28 U.S.C. §1341, could impose a substantial obstacle to Arizona obtaining adjudication of its claims and full relief.[2] But, by its terms, section 1341 imposes no limitations on this Court's powers in an original action.

In addition, because of the limitations of *Ex parte Young*, Arizona could not obtain any retrospective damages, which further renders district courts an inadequate forum. *See Edelman v. Jordan*, 415 U.S. 651, 663-667 (1974); *Wyoming v. Oklahoma*, 502 U.S. 437, 452 (1992) (exercise of this Court's original jurisdiction was "proper" "without assurances … that a State's interests under the Constitution will find a forum for appropriate hearing and *full relief*" (emphasis added)).

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[2] Arizona does not concede that the Tax Injunction Act would apply (*e.g.*, whether the $800 is a "fee" rather than a "tax") or that its application in such a suit would be constitutional as applied.

California state courts also do not provide an adequate alternative forum. "In California the sole legal remedy for resolving tax disputes is a postpayment refund action." *Direct Mktg. Ass'n, Inc. v. Bennett*, 916 F.2d 1451, 1453 (9th Cir. 1990). Because Arizona has not paid any taxes directly to California, it cannot pursue a refund action in California state courts. Moreover, California has its own constitutional and statutory analogs to the Tax Injunction Act that could bar jurisdiction. *See* Cal. Const. art. XIII, §32; Cal. Rev. & Tax. Code §6931.

Nor would individual-company refund actions in California state court provide an adequate alternative forum for four reasons. *First*, the low-dollar amount of the $800-tax is insufficient incentive for taxed entities to litigate these issues fully. *See Maryland v. Louisiana*, 451 U.S. at 739 (explaining that "individual consumers cannot be expected to litigate [the tax's] validity … given that the amounts paid by each consumer are likely to be relatively small").

Second, requiring individuals to file suit in California state courts would perversely perpetuate the due process/lack of personal jurisdiction constitutional violations. If California cannot constitutionally assert personal jurisdiction over the taxpayers in the first place, mandating that they subject themselves to the jurisdiction of California's courts "voluntarily" to obtain refunds impermissibly proliferates the constitutional violations.

Third, California and its Tax Board have proven remarkably—and incorrigibly—adept at evading meaningful relief from their own courts and agencies. Notwithstanding the Board of Equalization's

invalidation of imposing the "doing business" tax on limited partners not involved in management *two decades ago*, *supra* at 6-7, California has continued to apply the same deficient reasoning for LLCs to this date. Similarly, notwithstanding the California Court of Appeal's adverse decision in *Swart*, and the Office of Tax Appeals's adverse decision in *Satview*, Complaint ¶48, California has continued to apply its "doing business" tax to a vast swath of purely passive investors in LLCs. Complaint ¶¶39, 41-42. California's recalcitrance underscores the need for this Court to accept jurisdiction and ensure full relief.

Fourth, such refund actions necessarily would be unavailable to Arizona itself, which therefore would not have its interests "directly represented," militating in favor of accepting jurisdiction here. *Wyoming v. Oklahoma*, 502 U.S. at 438. Moreover, the individual companies could adequately assert neither Arizona's sovereign and quasi-sovereign interests (which belong to the State alone) nor its claims for damages.

III. CALIFORNIA'S EXTRATERRITORIAL ASSESSMENTS AND SEIZURES PRESENT GRAVE CONSTITUTIONAL VIOLATIONS

California's Extraterritorial Assessments and Seizures present patent and palpable violations of the U.S. Constitution, including the Due Process Clause of the Fourteenth Amendment, the Commerce Clause, and the Fourth Amendment. Those weighty violations heighten the need for this Court to exercise jurisdiction here.

A. California's Extraterritorial Assessments Violate Due Process

For nearly as long as the Fourteenth Amendment has existed, it has been well-established that its Due Process Clause imposes important and fundamental limitations on the ability of states to impose taxes: "Where there is jurisdiction neither as to person nor property, the imposition of a tax would be ultra vires and void." *Miller Bros. Co. v. Maryland*, 347 U.S. 340, 342 (1954) (quoting *City of St. Louis v. Wiggins Ferry Co.*, 78 U.S. 423, 430 (1870)). Indeed, "seizure of property by the State under pretext of taxation when there is no jurisdiction or power to tax is simple confiscation and a denial of due process of law." *Id.* Under this Court's precedents, California is engaged in unambiguous and lawless confiscation.

The Due Process Clause limits states' authority to impose taxes outside of their borders in a manner equivalent to the doctrine of personal jurisdiction: "due process requires some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax." *Id.* at 344-45; *accord Wayfair,* 138 S.Ct. at 2093 (same) (citing *Miller*). This standard effectively mirrors this Court's "minimum contacts" standard for personal jurisdiction. *Id.*

Under this Court's personal jurisdiction precedents, California's Extraterritorial Assessments unequivocally violate due process. Here, California seeks to impose taxes based solely on ownership interests in other business entities doing business in California. That is a subject this Court has already squarely addressed in *Shaffer v. Heitner*, 433 U.S. 186 (1977). In that case, this Court held that Dela-

ware could not exercise personal jurisdiction over directors and officers of a Delaware corporation for a derivative action based on their mere ownership of stock in the corporation. *Id.* at 213 ("Appellants' [stock] holdings in Greyhound do not, therefore, provide contacts with Delaware sufficient to support the jurisdiction of that State's courts over appellants.").[3] Courts have extended this same basic principle to ownership interests in LLCs.[4]

Shaffer thus precludes California exercising jurisdiction over companies whose only connection to California is passive investment in LLCs organized under California law or otherwise doing business there. Indeed, personal jurisdiction is even more obviously lacking here: the *Shaffer* appellants were notably officers and directors of the corporation and thus quite active in its management, not mere passive investors. *See also* Carter G. Bishop & Daniel S. Kleinberger, *Limited Liability Companies: Tax and Business Law Current Through 2009* §6.08[2] (2009) ("[T]he fact that the forum state has jurisdiction over the foreign limited liability company does not mean that that jurisdiction extends to the limited liability company's members.").

Because California could not exercise personal jurisdiction over out-of-state corporations and LLCs

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[3] *Accord Cent. States, Se. & Sw. Areas Pension Fund v. Reimer Express World Corp.*, 230 F.3d 934, 943 (7th Cir. 2000) ("We join other courts in finding that stock ownership in or affiliation with a corporation, without more, is not a sufficient minimum contact.") (collecting cases from First, Sixth, and Ninth Circuits).

[4] *See e.g.*, *Lopes v. JetsetDC, LLC*, 994 F. Supp. 2d 135, 146 (D.D.C. 2014); Complaint ¶147.

based solely on their passive ownership interest in California-Operating LLCs, it follows that California may not impose a "doing business" tax on them solely on that basis either.

B. California's Extraterritorial Assessments Violate The Commerce Clause

California's Extraterritorial Assessments flout the requirements of the Commerce Clause, which restricts states' ability to tax out-of-state businesses and interstate commerce. The constitutionality of such taxes is evaluated under the test established in *Complete Auto Transit, Inc. v. Brady*. 430 U.S. 274 (1977); *see Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 179 (1995) (*Complete Auto* test is "established test for the constitutionality of a state tax on interstate commerce"). *Complete Auto* imposes four requirements for taxation of interstate commerce to be constitutional, namely, the tax must be: (1) "applied to an activity with a substantial nexus with the taxing State"; (2) "fairly apportioned"; (3) non-discriminatory, *i.e.*, it "does not discriminate against interstate commerce"; and (4) "fairly related to the services provided by the State." *Complete Auto*, 430 U.S. at 279. Failing any one of the requirements is fatal to the tax. *Id.*

California's Extraterritorial Assessments remarkably violate *all four* requirements—a feat that appears unmatched by *any* tax this Court has ever reviewed previously. And the comprehensive and egregious nature of these Commerce Clause violations amplifies the need for this Court's review.

1. Substantial Nexus

Under the first *Complete Auto* requirement, a court "will sustain a tax so long as it … applies to an activity with a substantial nexus with the taxing State." *Wayfair*, 138 S.Ct. at 2091. This "requirement is 'closely related,' to the due process requirement that there be 'some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax[.]'" *Id.* at 2093 (citations omitted). Although the "standards may not be identical or coterminous," "there are significant parallels." *Id.*

For all of the same reasons that California's Extraterritorial Assessments violate due process, *supra* Section III.A, they similarly violate the substantial-nexus requirement. Mere passive ownership in a California-based LLC is scarcely a nexus at all, let alone a "substantial" one. Given the "substantial parallels" between the due process and substantial-nexus tests, and California's patent violation of the former, the Extraterritorial Assessment also flunks *Complete Auto*'s substantial nexus requirement. *See Norfolk & W. Ry. Co. v. Missouri State Tax Commission*, 390 U.S. 317, 325 (1968) ("The taxation of property not located in the taxing State is constitutionally invalid[.]") (invalidating tax under Commerce Clause and due process grounds).

2. Fair Apportionment

California's Extraterritorial Assessments similarly violate the second *Complete Auto* requirement of fair apportionment. Courts assess whether a tax is fairly apportioned by first asking whether the tax is "internally consistent" and, if so, whether it is "ex-

ternally consistent" as well. *See Jefferson Lines,* 514 U.S. at 185.

To satisfy the "internal consistency" test, a state tax must be of a kind that, "if applied by every jurisdiction, there would be no impermissible interference with free trade." *American Trucking Ass'ns, Inc. v. Scheiner*, 483 U.S. 266, 284 (1987). Under this Court's decision in *Scheiner*, it is clear that California's tax here violates that standard. And because California's Extraterritorial Assessments violate the internal-consistency test, there is no need to reach the test for external consistency.

In *Scheiner*, this Court invalidated two flat taxes imposed upon both in-state and out-of-state trucks for the privilege of using the highways in Pennsylvania. The Court explained that "[i]f each State imposed flat taxes for the privilege of making commercial entrances into its territory, there is no conceivable doubt that commerce among the States would be deterred." *Id.*

The $800 flat "doing business" tax assessed by California fails under *Scheiner* on the same bases. In essence, rather than charging a flat fee to enter the state on its roads, California has enacted an $800 toll for the "privilege" of entering its capital markets to invest in LLCs. If that same tax were enacted by all states, investment across state lines would be substantially dampened as those taxes would serve as an entry barrier to investing in LLCs in any state where the investors do not have any prior investments. Investors would thus tend to concentrate their investments in smaller subsets of states rather than viewing the country as a single capital market—which the Commerce Clause was designed to

create and guarantee. Such economic balkanization is precisely what the Commerce Clause forbids.

Although *Scheiner* invalidated a flat tax on physical commercial entrance into a state, the same rule should apply for California's toll on entry of investment capital.

3. Discrimination Against Interstate Commerce

Complete Auto's third requirement forbids discrimination against interstate commerce, which occurs where a state "impos[es] a heavier tax burden on out-of-state businesses that compete in an interstate market than it imposes on its own residents who also engage in commerce among States." *Scheiner*, 483 U.S. at 282.

This Court's *Scheiner* decision is instructive on this requirement as well. There, this Court also invalidated two unapportioned flat taxes, which were required to be paid in order for a truck to use Pennsylvania highways, as discriminatory.

The Court acknowledged that the flat taxes were facially neutral, because both in-state and out-of-state vehicle owners paid the same amounts. *Id.* at 273-75. But this Court nevertheless examined the "practical effect" of the flat taxes. *Id.* at 295.

The Court observed that in-state vehicles subject to the flat taxes "travel about five times as many miles on Pennsylvania roads…; correspondingly, the cost per mile of each of the flat taxes is approximately five times as high for out-of-state vehicles…." *Id.* at 276. Thus, "the taxes [we]re plainly discriminatory." *Id.* at 286.

California's "doing business" tax is even more clearly discriminatory than was the case in *Scheiner*. Companies that already do business in California will pay the $800 "doing business" tax regardless of whether they invest in any California LLCs, and thus face no marginal "doing business" tax for such investments. In contrast, out-of-state companies not already conducting business in California face an $800 charge. California's flat tax thus discriminates against out-of-state businesses by imposing a marginal tax on them to invest in California-Operating LLCs.

California's tax also discriminates against California companies that seek out-of-state capital by raising their investment costs: under basic economic principles, the out-of-state investors will incorporate the California tax into their investment costs, and accordingly what returns they demand. In contrast, California companies that rely purely on intrastate capital face no such burden.

4. Fair Relationship Between Tax And Benefit Conferred By California

The final requirement of the *Complete Auto* test "is closely connected to the first prong." *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 625-26 (1981). As a threshold matter, "the interstate business must have a substantial nexus with the State before *any* tax may be levied on it." *Id.* at 626. If such a nexus exists, "the *measure* of the tax must be reasonably related to the extent of the contact." *Id.* In other words, there must be a "fair relation between a tax and the benefits conferred upon the

taxpayer by the State." *Jefferson Lines*, 514 U.S. at 199.

Here even assuming there was *any* substantial nexus that could justify imposition of any Extraterritorial Assessment, the $800 "doing business" tax bears no rational relationship to the "benefit" that California is purportedly conveying. Ultimately, the only "benefit" that California is providing to out-of-state companies hit with the Extraterritorial Assessment is not shutting the businesses out of California's capital markets entirely based solely on their non-California citizenship—an action California could not constitutionally take in the first place. *Cf. City of Philadelphia v. New Jersey*, 437 U.S. 617 (1978) (invalidating New Jersey prohibition on importing out-of-state waste). Refraining from unconstitutional conduct is not conferring a "benefit" for which California can fairly demand compensation. *See also ASARCO Inc. v. Idaho Tax Comm'n*, 458 U.S. 307, 315 (1982) (The test for both the Commerce and Due Process Clauses is ultimately "whether the state has given anything for which it can ask return.").

To be sure, LLCs that actually are "doing business" in California do receive benefits such as "fire and police protection[.]" *See D.H. Holmes Co. Ltd. v. McNamara*, 486 U.S. 24, 32 (1988). Consequently, California's $800 assessment on those LLCs satisfies this *Complete Auto* requirement. But duplicatively assessing the same $800 tax on every out-of-state business that simply invests in the LLCs doing business in California does not. Those out-of-state businesses receive *no* separate benefits themselves, let alone any worth $800 annually.

C. The Tax Board's Extraterritorial Seizures Violate Due Process

California's Extraterritorial Seizures also present grave due process violations that warrant this Court's review. There are two independent reasons why California's Extraterritorial Seizures violate due process.

First, California lacks personal jurisdiction over the out-of-state funds and therefore cannot lawfully effectuate a seizure of them. As explained above, California cannot constitutionally exercise *in personam* jurisdiction on the basis of passive ownership in LLCs. *See supra* Section III.A. California similarly cannot exercise *in rem* jurisdiction over the moneys in Arizona bank accounts, given their situs outside of California's borders. *See*, *e.g.*, *Shaffer*, 433 U.S. at 199 ("If jurisdiction is based on the court's power over property *within* its territory, the action is called 'in rem' or 'quasi in rem.'" (emphasis added)); *Overby v. Gordon*, 177 U.S. 214, 222 (1900) ("It is repugnant to every idea of a proceeding *in rem* to act against a thing which is not in the power of the sovereign[.]"). And if California were attempting to exercise *quasi-in-rem* jurisdiction based on the ownership interests in California-based LLCs, that too would require the same "minimum contacts" that are lacking for *in personam* jurisdiction. *See Shaffer*, 433 U.S. at 209, 212.

California thus has no method of asserting jurisdiction over the out-of-state moneys that comports with this Court's due process precedents. Indeed, instead of relying on any lawful exercise of jurisdiction, California instead relies on raw power. That

coercive browbeating of banks might be effective, but it is not constitutional.

Second, California takes the additional step of denying banks any right to challenge a seizure order in *any court*, no matter how obvious the Tax Board's lack of jurisdiction might be. The Seizure Orders expressly mandate compliance by recipients "*without resort to any legal or equitable action in a court of law or equity*." Cal. Rev. & Tax. Code §18674(a) (emphasis added). California thus purports not only to deny access to its own courts to hear any such challenge, but forbids banks from challenging seizure orders in federal court and the courts of other states where the moneys are actually located.

* * *

Ultimately, California not only (1) seizes moneys that its agencies and courts lack jurisdiction over, but also (2) bars banks that are within its jurisdiction from obtaining any judicial process to contest the legality of its seizures. California's Extraterritorial Seizures thus pile due process violation upon due process violation, which warrant this Court's review.

D. California's Extraterritorial Seizures Violate The Fourth Amendment.

California's Extraterritorial Seizures also implicate—and violate—the Fourth Amendment. A seizure occurs for purposes of the Fourth Amendment whenever "there is some meaningful interference with an individual's possessory interests in that property." *United States v. Jacobsen*, 466 U.S. 109, 113 (1984). No "search" or applicable privacy interest is necessary for government action to constitute a

"seizure." *Soldal v. Cook County, Ill.*, 506 U.S. 56, 68 (1992). The Fourth Amendment "applies in the civil context as well" as the criminal context. *Id.* at 67.

Here, there can be no doubt that the Extraterritorial Seizures effectuate a "seizure" for purposes of the Fourth Amendment. And those seizures violate both the Fourth Amendment's reasonableness and warrant requirements.

As to the former, California's Extraterritorial Seizures are unreasonable under the Fourth Amendment because the power to effectuate searches and seizures is a sovereign power. *See Virginia v. Moore*, 553 U.S. 164, 176 (2008) (noting that "search-and-seizure laws … are the prerogative of independent sovereigns."). Where California is not sovereign—*i.e.*, in Arizona's territory—it necessarily follows any searches and seizures are presumptively unreasonable. And while there could be narrow exceptions to that general rule, California's blatant and unmitigated exercise of sovereign seizure power in Arizona's territory cannot possibly squeeze into whatever exceptions this Court might ultimately recognize.

California's Extraterritorial Seizures similarly violate the Fourth Amendment's Warrant Clause. Warrantless seizures are presumptively unlawful. *See*, *e.g.*, *U.S. v. Place*, 462 U.S. 696, 701 (1983); *Coolidge v. New Hampshire*, 403 U.S. 443, 454-55 (1971). The Seizure Orders here do not purport to be warrants, nor do they attempt to demonstrate any exception applies. Nor can the Seizure Orders be deemed equivalent to warrants for three reasons.

First, the Tax Board is not required to make any finding of probable cause before issuing a Seizure

Order. Indeed, the Tax Board can issue such orders in "its sole discretion" on the basis of nothing more than its own "reason to believe" such an order is appropriate. Cal. Rev. & Tax. Code §18670.5(a).

Second, the Tax Board does not attempt to seek *any* approval from a neutral judicial officer, such as a judge or magistrate. *See Illinois v. Gates*, 462 U.S. 213, 240 (1983) (holding that evaluation by a "'neutral and detached magistrate'" is an "essential protection of … the Fourth Amendment"). And California law is quite clear that "no judicial power has been, or could constitutionally be, conferred upon the … Tax Board." *Aronoff v. Franchise Tax Bd.*, 60 Cal. 2d 177, 182, 383 P.2d 409 (1963).

Third, even if California judicial officers approved a warrant for seizure, such a warrant could not lawfully be used to effectuate a seizure outside of California. *See*, *e.g.*, *State v. Jacob*, 185 Ohio App. 3d 408, 414-16 ¶¶24-25 (2009) ("[A] judge can issue a valid search warrant only within his or her court's jurisdiction[.]"); *United States v. Krueger*, 809 F.3d 1109, 1123-24 (10th Cir. 2015) (Gorsuch, J., concurring in the judgment) ("[A] warrant issued for a search or seizure beyond the territorial jurisdiction of a magistrate's powers … [is] *ultra vires* and *void ab initio*."); *United States v. Henderson*, 906 F.3d 1109, 1115-17 (9th Cir. 2018) (same); *United States v. Werdene*, 883 F.3d 204, 214 (3d Cir.), cert. denied 2018 WL 3611007 (2018); *United States v. Horton*, 863 F.3d 1041, 1049 (8th Cir.), cert. denied, 138 S.Ct. 1440 (2018).

California cannot turn to any exception to the warrant requirement to validate its actions here. Not only would California bear the burden of estab-

lishing an exception,[5] but whatever exceptions to the warrant requirement that California enjoys as sovereign should necessarily cease to exist in territory of another state.[6]

IV. ALTERNATIVELY, THIS COURT SHOULD GRANT LEAVE BECAUSE ITS ORIGINAL JURISDICTION IS NOT DISCRETIONARY

In the alternative, this Court should grant Arizona's request for leave because the plain text of 28 U.S.C. §1251(a) is best read as providing exclusive jurisdiction that is non-discretionary. This Court has admittedly held otherwise, *supra* at 3, but individual Justices have concluded that interpretation is unwarranted and "bears reconsideration." *Nebraska v. Colorado*, 136 S.Ct. 1034, 1035 (2016) (Thomas, J., dissenting, joined by Alito, J.); *accord New Mexico v. Colorado,* 137 S.Ct. 2319 (2017) (Thomas, J., dissenting) (same). Arizona agrees with these calls for reconsideration, and that this is the best reading of 28 U.S.C. §1251(a), which is an additional reason why its request for leave should be granted.

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[5] *See*, *e.g.*, *United States v. Jeffers*, 342 U.S. 48, 51 (1951).

[6] It is true that this Court has given the IRS latitude to seize property without a warrant. *See*, *e.g., G. M. Leasing Corp. v. U. S.*, 429 U.S. 338, 351-52 (1977). But that leeway was granted to a federal agency operating within United States's sovereign borders. Whatever similar latitude this Court may extend state tax collectors acting within their own sovereign borders surely does not extend outside those states' territories, where the states are not sovereign at all.

V. THE COURT SHOULD ORDER FULL MERITS BRIEFING OR APPOINT A SPECIAL MASTER

In addition to granting leave to file a complaint, this Court should either (1) order full briefing and argument as to constitutional liability or (2) appoint a special master to oversee any necessary discovery and trial of disputed factual issues.

All of the material facts regarding liability here should be undisputed. California's extraterritorial actions are pursuant to statutes and official policies of its Tax Board, including (in particular) Legal Ruling 2014-01. All of those statutes and policies remain in effect today. And the proposed Bill of Complaint sets forth concrete applications of California's Extraterritorial Assessments and Seizures that should not be genuinely contestable. This Court is amply equipped to apply established precedent to (what should be) uncontested facts. Arizona therefore requests that the Court order full merits briefing and oral argument on the liability issues. *Cf. Delaware v. Pennsylvania*, 137 S.Ct. 462 (2016) (providing states with option to file either stipulated facts and merits briefing or accept appointment of special master). Once liability is established, this Court can appoint a special master to address remedial and any other remaining issues in the first instance.

Alternatively, to the extent that California may somehow reasonably dispute its extant policies or any of the material facts regarding liability, or this Court believes that resolution of the issues presented would benefit from additional factual development, this Court should grant Arizona's request for leave and appoint a special master.

CONCLUSION

Arizona's motion for leave to file a Complaint against California should be granted.

Respectfully submitted,

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APPENDIX

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U.S. Const. art. I, § 8. cl. 3

Section 8, Clause 3. Regulation of Commerce

The Interstate Commerce Clause, U.S. Const. art. I, § 8, provides in relevant part:

"The Congress shall have Power ... To regulate Commerce ... among the several States[.]"

U.S. Const. amend. IV

Amendment IV. Searches and Seizures; Warrants

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

U.S. Const. amend. XIV, § 1

§1. Due process of law

The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution provides in relevant part:

"nor shall any state deprive any person of life, liberty, or property, without due process of law[.]"

28 United States Code § 1341

§1341. Taxes by States

"The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."

Cal. Const. art. XIII, §32

§32. Process to prevent, or enjoin collection of tax; action to recover tax paid

No legal or equitable process shall issue in any proceeding in any court against this State or any officer thereof to prevent or enjoin the collection of any tax. After payment of a tax claimed to be illegal, an action may be maintained to recover the tax paid, with interest, in such manner as may be provided by the Legislature.

California Revenue & Taxation Code §6931

§6931. Prohibition against injunction or other process to prevent collection

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this State or against any officer of the State to prevent or enjoin the collection under this part of any tax or any amount of tax required to be collected.

California Revenue & Taxation Code §17941

§17941. Tax for privilege of doing business in state; acceptance of articles or issuance of certificate of registration by Secretary of State; payment date; certificate of cancellation filings; deployment of sole owner

Cal. Rev. & Tax. Code § 17941, in relevant part, provides:

(a) For each taxable year beginning on or after January 1, 1997, a limited liability company doing business in this state (as defined in Section 23101) shall pay annually to this state a tax for the privilege of doing business in this state in an amount equal to the applicable amount specified in subdivision (d) of Section 23153 for the taxable year.

California Revenue & Taxation Code §17948

§17948. Tax for privilege of doing business in state; registration with Secretary of State; events ending tax liability; payment date

Cal. Rev. & Tax. Code § 17948, in relevant part, provides:

(a) For each taxable year beginning on or after January 1, 1997, every limited liability partnership doing business in this state (as defined in Section 23101) and required to file a return under Section 18633 shall pay annually to the Franchise Tax Board a tax for the privilege of doing business in this state in an amount equal to the applicable amount specified in paragraph (1) of subdivision (d) of Section 23153 for the taxable year.

California Revenue & Taxation Code §18670

§18670. Notice to withhold and to transmit amounts due; service; liability for failure to withhold and transmit; issuance of levies

(a) The Franchise Tax Board may by notice, served personally or by first-class mail, require any employer, person, officer or department of the state, political subdivision or agency of the state, including the Regents of the University of California, a city organized under a freeholders' charter, or a political body not a subdivision or agency of the state, having in their possession, or under their control, any credits or other personal property or other things of value, belonging to a taxpayer or to an employer or person who has failed to withhold and transmit amounts due pursuant to this article, to withhold, from the credits or other personal property or other things of value, the amount of any tax, interest, or penalties due from the taxpayer or the amount of any liability incurred by that employer or person for failure to withhold and transmit amounts due from a taxpayer under this part and to transmit the amount withheld to the Franchise Tax Board at the times that it may designate. However, in the case of a depository institution, as defined in Section 19(b) of the Federal Reserve Act (12 U.S.C.A. Sec. 461(b)(1)(A)), amounts due from a taxpayer under this part shall be transmitted to the Franchise Tax Board not less than 10 business days from receipt of the notice. To be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office reported in information returns filed with the Franchise Tax Board, or the branch or office

where the credits or other property is held, unless another branch or office is designated by the employer, person, officer or department of the state, political subdivision or agency of the state, including the Regents of the University of California, a city organized under a freeholders' charter or a political body not a subdivision or agency of the state.

(b)(1) At least 45 days before sending a notice to withhold to the address indicated on the information return, the Franchise Tax Board shall request a depository institution to do either of the following:

(A) Verify that the address on its information return is its designated address for receiving notices to withhold.

(B) Provide the Franchise Tax Board with a designated address for receiving notices to withhold.

(2) Once the depository institution has specified a designated address pursuant to paragraph (1), the Franchise Tax Board shall send all notices to that address unless the depository institution provides notification of another address. The Franchise Tax Board shall send all notices to withhold to a new designated address 30 days after notification.

(3) Failure to verify or provide a designated address within 30 days of receiving the request shall be deemed verification of the address on the information return as the depository institution's designated address.

(c)(1) Notwithstanding Section 8112 of the Commercial Code and Section 700.130 of the Code of Civil Procedure, when the Franchise Tax Board, pursuant to this section or Section 18670.5, issues a levy upon, or requires by notice, any person, financial institution, or securities intermediary, as applicable, to withhold all, or a portion of, a financial asset for the purpose of collecting a delinquent tax liability, the person, financial institution, or securities intermediary, as defined in Section 8102 of the Commercial Code, that maintains, administers, or manages that asset on behalf of the taxpayer, or has the legal authority to accept instructions from the taxpayer as to the disposition of that asset, shall liquidate the financial asset in a commercially reasonable manner within 90 days of the issuance of the order to withhold. Within five days of liquidation, the person, financial institution, or securities intermediary, as applicable, shall remit to the Franchise Tax Board the proceeds of the liquidation, less any reasonable commissions or fees, or both, which are charged in the normal course of business.

(2) If the value of the financial assets to be liquidated exceeds the tax liability, the taxpayer may, within 60 days after the service of the order to withhold upon the person, financial institution, or securities intermediary, instruct the person, financial institution, or securities intermediary as to which financial assets are to be sold to satisfy the tax liability. If the taxpayer does not provide instructions for liquidation, the person, financial institution, or securities intermediary shall liquidate the financial assets in a commercially reasonable manner and in an amount sufficient to cover the tax liability, and

any reasonable commissions or fees, or both, which are charged in the normal course of business, beginning with the financial assets purchased most recently.

(3) For purposes of this section, a financial asset shall include, but not be limited to, an uncertificated security, certificated security, or security entitlement as defined in Section 8102 of the Commercial Code, a security as defined in Section 8103 of the Commercial Code, or a securities account as defined in Section 8501 of the Commercial Code.

(d) Any corporation or person failing to withhold the amounts due from any taxpayer and transmit them to the Franchise Tax Board after service of the notice shall be liable for those amounts. However, in the case of a depository institution, if a notice to withhold is mailed to the branch where the account is located or principal banking office, the depository institution shall be liable for a failure to withhold only to the extent that the accounts can be identified in information normally maintained at that location in the ordinary course of business.

California Revenue & Taxation Code §18670.5

§18670.5. Depository institutions; service of notice by magnetic media, electronic transmission, or other electronic technology; contents; liability for failure to withhold and transmit

(a) The Franchise Tax Board may by notice, served by magnetic media, electronic transmission, or other electronic technology, require any depository institution, as defined in Section 19 (b) of the Federal Reserve Act (12 U.S.C.A. Sec. 461(b)(1)(A)), that the Franchise Tax Board, in its sole discretion, has reason to believe may have in its possession, or under its control, any credits or other personal property or other things of value, belonging to a taxpayer, to withhold, from the credits or other personal property or other things of value, the amount of any tax, interest, or penalties due from the taxpayer and transmit that amount withheld to the Franchise Tax Board at the times that it may designate, but not less than 10 business days from receipt of the notice. The notice shall state the amount due from the taxpayer and shall be delivered or transmitted to the branch or office reported in the information returns filed with the Franchise Tax Board, or the branch or office where the credits or other property is held, or other address designated by that depository institution for purposes of the Franchise Tax Board serving notice by magnetic media, electronic transmission, or other electronic technology.

(b) Any depository institution failing to withhold the amount due from the taxpayer and to transmit that

amount to the Franchise Tax Board after the Franchise Tax Board provides notice to the depository institution as authorized by subdivision (a) shall be liable for those amounts only to the extent that the depository institution can identify the account by magnetic media, electronic transmission, or other electronic technology.

(c) For purposes of this section, the term "address" shall include telephone or modem number, facsimile number, or any other number designated by the depository institution to receive data by electronic means.

California Revenue & Taxation Code §18674

§18674. Compliance with requirements to withhold and transmit amounts due without resort to court; liability of employer or person required to withhold regarding taxpayer

(a) Any employer or person required to withhold and transmit any amount pursuant to this article shall comply with the requirement without resort to any legal or equitable action in a court of law or equity. Any employer or person paying to the Franchise Tax Board any amount required by it to be withheld is not liable therefor to the person from whom withheld unless the amount withheld is refunded to the withholding agent. However, if a depository institution, as defined in 12 U.S.C. Sec. 461(b)(1)(A) withholds and pays to the Franchise Tax Board pursuant to this article any moneys held in a deposit account in which the delinquent taxpayer and another person or persons have an interest, or in an account held in the name of a third party or parties in which the delinquent taxpayer is ultimately determined to have no interest, the depository institution paying those moneys to the Franchise Tax Board is not liable therefor to any of the persons who have an interest in the account, unless the amount withheld is refunded to the withholding agent.

(b) In the case of a deposit account or accounts for which this notice to withhold applies, the depository institution shall send a notice by first-class mail to each person named on the account or accounts included in the notice from the Franchise Tax Board, provided that a current address for each person is

available to the institution. This notice shall inform each person as to the reason for the hold placed on the account or accounts, the amount subject to being withheld, and the date by which this amount is to be remitted to the Franchise Tax Board. An institution may assess the account or accounts of each person receiving this notice a reasonable service charge not to exceed three dollars ($3).

(c) Any employer or person required under this article to withhold payments from a taxpayer may file an action in interpleader when a bona fide dispute has arisen as to priority of lien between the tax levied under this part and that of a federal taxing agency.

California Revenue & Taxation Code §23101

§23101. "Doing business" defined

(a) "Doing business" means actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

(b) For taxable years beginning on or after January 1, 2011, a taxpayer is doing business in this state for a taxable year if any of the following conditions has been satisfied:

(1) The taxpayer is organized or commercially domiciled in this state.

(2) Sales, as defined in subdivision (e) or (f) of Section 25120 as applicable for the taxable year, of the taxpayer in this state exceed the lesser of five hundred thousand dollars ($500,000) or 25 percent of the taxpayer's total sales. For purposes of this paragraph, sales of the taxpayer include sales by an agent or independent contractor of the taxpayer. For purposes of this paragraph, sales in this state shall be determined using the rules for assigning sales under Sections 25135 and 25136, and the regulations thereunder, as modified by regulations under Section 25137.

(3) The real property and tangible personal property of the taxpayer in this state exceed the lesser of fifty thousand dollars ($50,000) or 25 percent of the taxpayer's total real property and tangible personal property. The value of real and tangible personal property and the determination of whether property

is in this state shall be determined using the rules contained in Sections 25129 to 25131, inclusive, and the regulations thereunder, as modified by regulation under Section 25137.

(4) The amount paid in this state by the taxpayer for compensation, as defined in subdivision (c) of Section 25120, exceeds the lesser of fifty thousand dollars ($50,000) or 25 percent of the total compensation paid by the taxpayer. Compensation in this state shall be determined using the rules for assigning payroll contained in Section 25133 and the regulations thereunder, as modified by regulations under Section 25137.

(c)(1) The Franchise Tax Board shall annually revise the amounts in paragraphs (2), (3), and (4) of subdivision (b) in accordance with subdivision (h) of Section 17041.

(2) For purposes of the adjustment required by paragraph (1), subdivision (h) of Section 17041 shall be applied by substituting "2012" in lieu of "1988."

(d) The sales, property, and payroll of the taxpayer include the taxpayer's pro rata or distributive share of pass-through entities. For purposes of this subdivision, "pass-through entities" means a partnership or an "S" corporation.

California Revenue & Taxation Code §23151

§23151. Imposition of tax on net income; rate; minimum tax

Cal. Rev. & Tax. Code § 23151, in relevant part, provides:

(a) With the exception of banks and financial corporations, every corporation doing business within the limits of this state and not expressly exempted from taxation by the provisions of the Constitution of this state or by this part, shall annually pay to the state, for the privilege of exercising its corporate franchises within this state, a tax according to or measured by its net income, to be computed at the rate of 7.6 percent upon the basis of its net income for the next preceding income year, or if greater, the minimum tax specified in Section 23153.

California Revenue & Taxation Code §23153

§23153. Minimum franchise tax; deployment of sole owner

Cal. Rev. & Tax. Code § 23153, in relevant part, provides:

(a) Every corporation described in subdivision (b) shall be subject to the minimum franchise tax specified in subdivision (d) from the earlier of the date of incorporation, qualification, or commencing to do business within this state, until the effective date of dissolution or withdrawal as provided in Section 23331 or, if later, the date the corporation ceases to do business within the limits of this state.

(b) Unless expressly exempted by this part or the California Constitution, subdivision (a) shall apply to each of the following ...

(3) Every corporation that is doing business in this state ...

(d)(1) Except as provided in paragraph (2), paragraph (1) of subdivision (f) of Section 23151, paragraph (1) of subdivision (f) of Section 23181, and paragraph (1) of subdivision (c) of Section 23183, corporations subject to the minimum franchise tax shall pay annually to the state a minimum franchise tax of eight hundred dollars ($800).

(2) The minimum franchise tax shall be twenty-five dollars ($25) for each of the following:

(A) A corporation formed under the laws of this state whose principal business when formed was gold mining, which is inactive and has not done business within the limits of the state since 1950.

(B) A corporation formed under the laws of this state whose principal business when formed was quicksilver mining, which is inactive and has not done business within the limits of the state since 1971, or has been inactive for a period of 24 consecutive months or more.

(3) For purposes of paragraph (2), a corporation shall not be considered to have done business if it engages in business other than mining.