

# **Bond Case Briefs**

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## **TAX - CALIFORNIA**

### **Gillette Co. v. Franchise Tax Bd.**

**Supreme Court of California - December 31, 2015 - P.3d - 2015 WL 9589602 - 14 Cal. Daily Op. Serv. 21**

This case evaluated California's calculation of income taxes on multistate businesses.

In 1974, California joined the Multistate Tax Compact, which contained an apportionment formula and permitted a taxpayer election between the Compact's formula and any other formula provided by state law. The Legislature later amended the Revenue and Taxation Code to specify a different apportionment formula that "shall" apply "[n]otwithstanding" the Compact's provisions. (Rev. & Tax.Code, § 25128, subd. (a) (section 25128(a)).)

Taxpayers here contended that they remained entitled to elect between the new statutory formula and that contained in the Compact.

The Supreme Court of California concluded that the Legislature may properly preclude a taxpayer from relying on the Compact's election provision, holding that:

- Multistate Tax Compact is not binding under constitutional contract clauses;
- Amendment of Uniform Division of Income for Tax Purposes Act (UDITPA) apportionment formula did not violate constitutional reenactment rule; and
- Amendment of UDITPA amended the Multistate Tax Compact.

The Multistate Tax Compact is not a binding contract among its member states to preserve the Uniform Division of Income for Tax Purposes Act (UDITPA) apportionment formula, and thus the UDITPA formula does not take precedence over other state law under the contract clauses of the federal and state Constitutions, since states may unilaterally join and withdraw from the Compact, and the Multistate Tax Commission has no binding regulatory authority upon member states.

Amendment of Uniform Division of Income for Tax Purposes Act (UDITPA) apportionment formula providing that "all business income shall be apportioned to this state" under a new formula did not violate the constitutional reenactment rule, even though there was no reenactment of the Multistate Tax Compact to eliminate its provision authorizing election of a different apportionment formula, where the UDITPA amendment referenced the Compact provision.

Amendment of Uniform Division of Income for Tax Purposes Act (UDITPA) apportionment formula providing that "all business income shall be apportioned to this state" under a new formula amended the Multistate Tax Compact to require the use of the new formula.