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By [Robert W. Wood](#)

# Beware California Taxes, Even if You Don't Set Foot In California

If you live in California, you probably know that California's state tax agency, the Franchise Tax Board, can be *awfully* aggressive. The state income tax collector has a fearsome reputation, so even if you live somewhere else, you might have heard of the Golden State's aggressive tax rules. If you live and work in California, you are paying California tax and filing returns. But what if you don't?

Might you still have to pay California taxes? Say you buy a vacation home in California, and stay a little too long? Come into the state and do some work for your non-California employer? Travel to California trying to sell some products or collect data you'll use out of state when you get back home? It can feel as if just about *any* connection to California can be enough to raise tax issues.

The thought of leaving California over taxes is nothing new. In fact, California's top 13.3% tax on capital gains inspires plenty of tax moves. California is known to chase residents who leave, and to disagree about whether they really are non-residents. Even if you think your facts are good, be careful. Say you move from California to Texas and then sell your appreciated stock or bitcoin.

California might say you didn't actually establish residency in Texas until several months later. That might be enough to make all your sales California source income. It can make you wonder whether California will 'let' you move states! Some people even seek to avoid California taxes with trusts. Most tax lawyers would much rather fight the IRS than California's FTB. But can you *truly* be outside of California and *still* face California taxes?

A recent decision says you can. In the Matter of Blair S. Bindley, OTA Case No. 18032402 (May 30, 2019), a nonresident sole proprietor performed all of his services *outside* of California. Some of his customers were located *in* California. Is that enough for the poor guy to attract California tax liability? The California taxing authorities said he was operating a "unitary" business, so his tiny business was subject to California's apportionment rules.

Mr. Bindley is a self-employed screenplay writer living in Arizona. He wrote for a few companies in California and earned \$40,000 from California companies. He did not file a California tax return, so California's tax statute of limitations *never* started to run. California ruled that Bindley's screenwriting business was carried on inside and outside

of California. He worked as a proprietor and basically did the same kind of work for non-California and for California companies.

If your business is “unitary,” the income derived from services is sourced to the place where the *benefit* of the service is received. For the companies located in California that paid the screenwriter, California said the companies received the benefit of these services in California. Does this screenwriter’s unfortunate tax flap mean *other* little businesses that happen to sell in California could face tax troubles? Yes, it sure seems that way. When it comes to California taxes, be careful out there.

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