

3 Things To Know About Florida v. California At High Court

By **Maria Koklanaris**

Law360 (November 18, 2025, 1:29 PM EST) -- Florida startled many in the state tax community in late October by telling the U.S. Supreme Court that the state has been harmed by a special tax rule California uses along with its single-sales-factor apportionment method.

The special rule, known as the occasional sales rule, determines how the state apportions substantial amounts of business done by a taxpayer that is outside the taxpayer's usual type of business. Existing since the early 2000s, it may come into play, for example, if a taxpayer that normally sells software — its usual business — sells the building it had been occupying: a substantial sale, but only an occasional one.

State and local tax practitioners were surprised at Florida's action not only because the rule is not unique to California — other states, including Florida itself, have similar rules — but because the underlying method of single-sales-factor apportionment was long ago approved by the Supreme Court in *Moorman Manufacturing v. Bair*.

Among those surprised was Richard Pomp, a tax professor at the University of Connecticut. Pomp said, in his opinion, using only sales to determine the apportionment factor is wrong.

"It's absurd not to take into account property and payroll," he said, though noting that the justices dealt with this in 1978 and found differently.

"What are they talking about?" Pomp said of Florida. "We are back to the dissent in *Moorman*."

Still, Pomp said that since the case is one of original jurisdiction, some justices will want to consider it. Whether enough of them want to is another matter, he said.

Here, Law360 explores that question and other things to know about Florida's tax complaint against California.

Florida is Confident

In the complaint, filed Oct. 28, Florida argued that California's use of single-sales-factor apportionment, a method used by at least 28 other states and the District of Columbia, is a tariff that is harming Florida's residents and businesses. Florida added that the occasional sales rule "supercharges the tariff" by excluding from the denominator of the sales factor "large sales attributable to the jurisdiction where a corporation's payroll and property are located."

This has the effect of apportioning far more business income to California than appropriate, Florida said. It gave an example by which only 5% of sales were connected to California, but the state would get 50% of business income.

"If there was a significant sale and that's excluded from the factor, then it's their argument that this is significantly increasing the California tax because they are not diluting the factor by including those Florida sales in the denominator," said William Gorrod, state tax partner in the San Francisco office of Morgan Lewis & Bockius LLP.

This actually circumvents the Moorman decision, Florida said in the complaint.

"While this court approved the use of a single-sales-factor in Moorman ... it did so on the condition that states may not arbitrarily exclude out-of-state sales from their apportionment formulas to reach profits earned elsewhere," Florida said. "But that is precisely what the special rule does."

The rule combined with single-sales-factor apportionment violates the commerce clause, import-export clause and due process clause, Florida said. The California Franchise Tax Board, which administers the income tax in California and is named in the suit, declined to comment.

Jae Williams, a spokesman for Florida Attorney General James Uthmeier, a Republican, said Uthmeier finds the action timely "as he seeks to protect Floridians from California's tax regime." Uthmeier is confident in his legal standing and intends to win at the Supreme Court, Williams said.

Others See a High Hurdle

A variety of tax professionals who spoke to Law360 took a different view from Florida and echoed the skepticism voiced by Pomp.

Darien Shanske, a tax professor at the University of California, Davis, School of Law, went quite a bit further, calling the complaint "performatively preposterous."

On his first reading, Shanske said, he determined that Florida taxpayers have an alternative forum, that they are not harmed and that the regulations are constitutional.

"On second reading — even more absurd," Shanske said.

Gorrod said history is a guide. The Supreme Court hasn't been inclined to take many state and local tax cases in recent years. And here, the justices may see the question as one of policy, not constitutionality, he said.

"I think, historically, the court has not wanted to constitutionalize one apportionment regime over another," Gorrod said. And given Moorman, Gorrod added, "I would think it's certainly an uphill battle to try to find a single-sales-factor regime unconstitutional."

Michael Bowen, a tax partner at Akerman LLP and a veteran Florida practitioner, said he wasn't buying Florida's position. He called the complaint "political theater" and said it is not rooted in any practicality.

Bowen would be surprised if the court takes the case, but even if it does, he said Florida's chances of

winning are low.

Florida's argument is along the lines of distortion, Bowen said. He said the state is arguing that California's law creates a distortive effect that impacts Florida businesses and ultimately impacts its citizens.

"If I've learned anything from making these types of arguments against departments of revenue in my practice, and reading the case law, it is that these cases are rarely, if ever, successful," he said.

What's more, Bowen said, Florida has a similar provision. It gives the state's tax department "some pretty broad discretion to make the same sort of conclusions as to the same sorts of gains" that are part of the argument against California, he said. He said he has experienced it on audit.

Bowen said he would remember that Florida has made this argument.

"To the extent that I have this issue come up in Florida again, you can bet I'm going to cite the petition," he said.

Federal Government May Play a Role

If the justices have any interest in the case, they may signal that by asking the federal government to weigh in. In cases of original jurisdiction, especially those between states, the court often uses its ability to call for the views of the solicitor general, said Michael Lurie, state tax partner at Reed Smith LLP.

He said Justices Clarence Thomas and Samuel Alito have expressed the view that the court is obligated to hear cases of original jurisdiction. A push from the government may sway a few others, Lurie said.

Lurie said if the solicitor general were to advise the justices to take the case, they probably would. If the solicitor general were to equivocate or advise the court to decline, the court would then likely follow that advice, he said.

Lurie said he thinks there is enough for the court to examine. Although the court has generally approved single-sales-factor apportionment, he said he thinks it left the door somewhat open, especially for as-applied challenges.

"They didn't say it's OK in every circumstance," Lurie said. "I think this presents a chance for the court to weigh in on what distortion means. When is a single sales factor not OK? That would add so much to our knowledge base."

--Additional reporting by Paul Williams. Editing by Aaron Pelc and Emma Brauer.