

## **Attorney General gains support in legal fight against California business tax**

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Attorney General Mark Brnovich is getting some allies in its legal fight with California over that state's efforts to tax Arizona businesses and individuals.

In new legal briefs, the Southeastern Legal Foundation and the Cato Institute tell the U.S. Supreme Court that California has "run roughshod" over the Due Process Clause of the U.S. Constitution by imposing its own business taxes on those whose connection to California companies is "purely passive investment."

The attorneys for the two groups argue that it is illegal for California is trying to argue that those who have ownership interests in limited liability companies in that state are themselves doing business there. And that, California contends, subjects the LLC owners to the state's \$800 annual tax.

Others also are siding with Arizona in the fight.

The National Federation of Independent Business and DRI, an association of defense counsel, filed their own legal arguments asking the nation's high court to void what California is doing.

"California's so-called 'doing business' tax scheme not only offends but upends traditional notions of fair play and substantial justice and well-established limits on state sovereignty," attorneys for those groups told the Supreme Court.

And the National Taxpayers Union took a particular swat at the practice of California authorities of seizing the bank deposits of Arizonans who have refused to pay the levy, saying it "equates to a cross-border raid."

"California's confiscations are arbitrary and lack basic due process protections, such as notice and an opportunity to be heard," their lawyers wrote.

None of this guarantees that Brnovich will win the lawsuit he filed in March against California -- or even that the Supreme Court will intercede. And California is not due to respond to the lawsuit until later this month.

But the legal briefs tell the justices that they are the only remedy for Arizonans harmed by the California practice -- a practice that Brnovich says is taking about \$10.6 million a year out of the pockets of Arizonans.

And because Arizonans get a deduction for taxes paid to other states, Brnovich figures Arizona loses about \$484,000 a year.

At the heart of Arizona's complaint is that "doing business" tax. Brnovich has no specific challenge to California's authority to do that.

What is an issue, he is arguing, is a decision by California to decide that anyone who is an investor in a limited liability company doing business in California is also, by definition, doing business in the state and also subject to that \$800-a-year levy.

The lawyers for the Southeast Legal Foundation and the Cato Institute, in their legal brief, tell the justices what California is doing runs afoul of their prior rulings which set a "minimum contacts" standard before a state can impose its tax. And what that means, they said, is that someone who is a resident of some other state must "have purposefully availed himself of the benefits and protections of another state."

Simply being an investor in a California company, they said, doesn't meet that standard, any more than someone who is an officer or a director of a California company is doing business within that state.

But the real offensive part, the attorneys for those groups said, is how the California Tax Board enforces the law through "seizure orders," notice to banks demanding that they surrender the amounts sought.

"For example, if a company does not voluntarily pay the assessment, California locates any funds the company holds in out-of-state bank accounts and demands that the relevant banks transfer the funds to the state," the lawyers said.

"And if the bank refuses to comply with the demand, California takes the money from the bank's accounts instead," they write. "California effectuates these extraterritorial seizures ex parte, without notice, without warrant, and with no opportunity for judicial review."

In asking the Supreme Court to intercede, Brnovich said this isn't the first time California has sought to impose its laws on those in other states. He specifically mentioned the state authorizing its agriculture inspectors to go into other states to investigate whether companies that intend to sell eggs in California are complying with California egg-production standards.