



# California Corporate & Securities Law

## You May Be Doing Business In California Even When Not Transacting Intrastate Business

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### The Question

In this [Legal Ruling](#) issued on 1/1/11, the [Franchise Tax Board](#) addressed the question of whether a sole owner of a disregarded entity (*i.e.*, a qualified Subchapter S corporation or single member limited liability company) is “doing business” in California if the owner has no activities in California other than those of its disregarded entity.

### The Corporations Code

Corporate lawyers may be quick to point out that Corporations Code § 191(b)(2) & (6) provides that a foreign corporation will not be considered to be transacting intrastate business merely because of its status as either a shareholder of a foreign corporation transacting intrastate business or a member or manager of a foreign limited liability company transacting intrastate business.

### The FTB’s Answer

In light of these provisions in the Corporations Code, corporate lawyers may be surprised to learn that the FTB has concluded that the activities of the disregarded entity will be considered activities of its owner. Thus, if the activities of the disregarded entity constitute “doing business” in California, the owner is also doing business in California due to its ownership of the disregarded entity. This means that the owner is required to file a California franchise tax return and pay the associated tax. An owner that fails to do so (unless the FTB’s Legal Ruling is successfully challenged) will be subject to penalties and interest.

### Latin vs. Old English

If the Corporations Code says mere ownership is not enough to trigger a requirement that a foreign corporation qualify to business in California, what possible basis is there for the FTB’s legal ruling? The answer lies in the confusingly similar terminology found in the two codes.

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The Corporations Code defines and uses the phrase “transact intrastate business” (Sections 191 and 17001(a)) while the Revenue and Taxation Code defines and uses phrase “doing business” (Section 23101(a)). While “transact intrastate business” and “doing business” sound like the same thing, the codes actually define the phrases differently.

Why two words with similar meanings? The verb “transact” comes into the English language from the Latin word *transigo*, meaning to drive through while the verb “do” comes the Old English word “don” meaning to make or act. We can blame Julius Caesar and William the Conqueror for the Latin and that Angles and the Saxons for the Old English. Because England was invaded by the Romans (55 B.C.), the Angles, Saxons and Jutes (circa 453 A.D.) and the Normans and French (1066 A.D.), the English language has ended up with many different words for substantially the same thing.

### **The Expanded Scope of “Doing Business”**

The Franchise Tax Board’s Legal Ruling takes on added significance in light of legislation that significantly expanded the definition of “doing business” in Section 23101. This legislation is effective for taxable years beginning on or after 1/1/11. Not surprisingly, this change was enacted to address California’s fiscal emergency. Stats. 2009–2010 3rd Ex. Sess. Ch. 17, § 16.

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