

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 009

June 27, 1958

DEDUCTIONS: OVERCHARGES PAID TO O.P.A.

Syllabus:

A penalty payment for overcharges knowingly made in violation of O.P.A. regulations is not deductible as an ordinary and necessary business expense. If such violation is innocently or unintentionally committed the penalty payment is deductible as an ordinary and necessary business expense.

Advice is requested as to the deductibility of penalty payments for overcharges in violation of O.P.A. regulations.

Judicial authority takes the position that erroneous overcharges unknowingly or unwittingly made in violation of price ceiling laws and required to be paid to the government are deductible. This is the rule both where the overcharges are voluntarily disclosed and where they are discovered by an investigation. On the other hand, where violations are made knowingly and intentionally, as opposed to innocently and unintentionally, the payment will be disallowed as business expenses. The theory of these rulings is that if the overcharges were unwittingly and innocently made, allowing a deduction for such overcharge to the government would not frustrate the administration of the Price Control Act. The opposite result follows where the overcharge was deliberately or intentionally made.