

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 032

June 25, 1958

DOING BUSINESS: TRANSFERRING LIQUIDATING ACTIVITIES TO CALIFORNIA

Syllabus:

Upon the facts subject corporations activities in liquidation were found to constitute doing business in California and, further, that the corporation's commercial domicile was found to be in California and its interest from intangibles allocable to California.

Taxpayer, a Minnesota corporation was engaged in manufacturing in that state. It terminated that business and sold its operating assets. Real property was sold, and taxpayer took interest bearing land contracts to cover the sale price. Thereafter, all directors, officers, and stockholders moved to California and headquarters were established in this State. The receipt of principle and interest on the land sales contracts were allocated to Minnesota on taxpayer's corporation income tax return. The receipts on the contracts are collected by taxpayer's attorney in Minnesota and deposited to its account there. These monies are invested by the board of directors in various corporate shares on which considerable dividend income is realized. No liquidating dividends have been paid by taxpayer, the plan being to dissolve immediately upon completion of collections on the land contracts. Advice is requested as to whether taxpayer is doing business in California so as to be subject to franchise tax and as to whether the interest on the land contracts should be allocated to California or Minnesota.

Section 23101 of the Bank and Corporation Tax Law states that "doing business" means actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Investing the accumulated income from the land contracts in corporate shares is clearly engaging in a transaction for the purpose of financial or pecuniary gain or profit; therefore, the corporation is doing business. Its only place of business is in California; therefore, taxpayer is doing business in California. Although the stock purchases may be negotiated by communication with brokers in Minnesota and paid for in Minnesota, still the action of the directors in initiating and closing the transactions takes place in California.

The interest on the land contracts is nonbusiness income, not being attributable to business activities. When the land was exchanged for purchase money obligations, taxpayer realized a capital gain and commenced to realize interest income. Though both principal and interest are represented in each payment received on the land contract, they are separable for purposes

of reporting on the return and for purposes of allocation. The principal is reported as a capital gain, and since it is attributable to the land, it is allocable to the situs of the land. The interest income, reported as a separate item, is attributable not to the land but to a reinvestment of the corporate wealth in purchase money paper; therefore, it is allocable according to the rules for allocation of income from intangibles. Thus, the interest income is allocable to California, which is now the commercial domicile of the corporation.

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