

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 111

February 1, 1954

ELECTION TO REPORT GAIN ON AN INSTALLMENT BASIS

Syllabus:

Only a taxpayer who files a timely return may elect to report capital gains on an installment basis.

Nonresident taxpayers operated a joint venture under the name of X Co. In 1951 X Co. sold standing timber in California on an installment basis. Timely Federal returns were filed; however, neither X Co. nor taxpayers filed timely California income tax returns. Following inquiries, a delinquent partnership return was filed wherein the gain was computed on an installment basis. Subsequently each partner filed a return reporting his distributive share upon an installment basis. Advice is requested whether taxpayers may elect to use the installment method for reporting capital gains on a delinquent return.

Revenue Ruling 93, 1953-1 C.B. 82, provides an election to report a sale of property on the installment basis under Section 44 of the Internal Revenue Code must be exercised in a timely filed return for the taxable year in which the sale was made; otherwise, the right of such election is forfeited. (See Sarah Briarly v. Comm., 29 BTA 256; and Cedar Valley Distillery, Inc., 16 TC 870).

Section 17578 of the Personal Income Tax Law, formerly Section 17532, is similar in substance to the Federal provision; therefore, for State income tax purposes, the Briarly rule will be followed. Consequently, since none of the taxpayers filed a timely return they should not be permitted to use the installment method.