CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 113

February 16, 1954

TAX CREDITS: PHILIPPINE INCOME AND EXCISE TAXES ON DIVIDENDS

Syllabus:

Amounts paid as income tax to the Philippine government on dividends are neither deductible nor allowable as a credit against California Income Taxes; however, amounts paid as an excise tax are allowable as a deduction.

Taxpayer, a resident of this state, owns shares of stock in Philippine corporations. Dividends from the shares are subject to both a Philippine excise tax levied upon money withdrawn from the country (which is a tax on foreign exchange) and the Philippine income tax (withheld at the source). Under Philippine law all dividends paid by domestic corporations are considered as originating from sources within the Philippines. Advice is requested as to the extent either of the taxes are allowable as credits or deductions in computing taxpayer's California income tax.

The Philippine income tax is a net income tax. Dividends are taxed by withholding at the source; such payments are allowable as credits for Philippine tax purposes if the shareholder files an income tax return at the close of the year. Section 17976 of the 1954 Personal Income Tax Law (Section 18001 of the 1957 Personal Income Tax Law effective June 6, 1955 deleted the provision allowing a credit for taxes paid foreign countries) allowed a credit for net income taxes paid a foreign country upon income having its source in such foreign country. However, California follows the mobilia rule under which intangibles have a tax situs at the residence of the owner. Since the owner of the stock is a resident of this state, the income is from California sources and thus no credit is allowable. (Miller v. McColgan, 17 Cal. 432.) Further, as the tax levied was a net income tax, the amount is not allowable as a deduction under Section 17305 of the 1954 Personal Income Tax Law (now Section 17205).

The excise tax is not upon income, being levied upon the act of removing money from the Philippines, and does not fall within any of the exceptions of Section 17305 (now Section 17205). Accordingly, such payments are allowable as deductions.