

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 117

May 12, 1958

DOING BUSINESS

Syllabus:

When the activities of one joint venturer in the course of business of the joint venture constitutes "doing business" within this State, the other joint venturers are also "doing business" within this State.

Taxpayer, a foreign commercial banking corporation, has its principal office outside this State. It, together with a firm of local attorneys acting as its representative, began making loans to individuals and corporations in this State which were secured by mortgages or deeds of trust on the property of the borrowers. Taxpayer also took numerous assignments of accounts receivable from firms in California. Subsequently taxpayer entered into an agreement with X, a California financial corporation, under which the two firms agreed to purchase at a discount the accounts receivable of A Co., a California corporation. Under the agreement X would participate in all assignments from A Co. to the extent of one-third and taxpayer would assume the balance, and each would be liable for losses on these accounts at the same ratio. Before purchase, the accounts must be approved by either taxpayer or X and both must notify the other of the accounts approved. After approval X pays 80% of the face value less 3% discount to A and retains 20% to cover merchandise or delivery disputes. X then notifies taxpayer of the purchase, sending all original documents of the transaction to taxpayer, who remits to X its portion of the amounts paid. Each account is assigned to taxpayer, who makes all collections at its office, which is outside of this State. As taxpayer makes collections it remits to X its share of collections and returns to A Co. any excess in the reserve over 20% of the balance due on account. Advice is requested whether taxpayer is doing business within California.

During the first period taxpayer was represented in California by local attorneys who negotiated the loans on taxpayer's orders from outside this State. It is concluded that during such period the relationship was not sufficiently close to create an agency relationship for the purpose of "doing business." Also the mere loaning of money secured by realty in this State or purchasing accounts receivable from a California creditor by a representative of the corporation is not sufficient to give the investments a business situs in California.

However, during the subsequent period taxpayer entered into an agreement with X to purchase accounts receivable of a California corporation. The agreement contained all the elements of a joint venture arrangement. Since under a joint venture agreement

each venturer acts as an agent of the other, the acts of X which caused the joint venture to be "doing business" are also the acts of taxpayer causing it also to be "doing business" within this State. See People ex rel Badische, Anilin, and Soda Fabrik v. Roberts, 152 N.Y. 59; and Village of Westby v. Bekkedal, 172 Wis. 114.

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