

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 125

May 13, 1958

BUSINESS SITUS OF INTANGIBLES: NONRESIDENT PARTNERS

Syllabus:

Intangibles which constitute the chief item of capital of a partnership which is engaged in a continuous course of business within the State and is controlled by the resident partner from this State have a business situs in California. Nonresident partners are taxable on distributive shares of income.

X Co. is a family investment business in which seven members of a family pooled their assets, which consists chiefly of corporate stocks. They delegated the management to A, one of the family. Substantial income has been realized and each member credited with his share. At the time X Co. was created all members were nonresidents of this State. However, since that time three members, including A, have become residents of this State. Returns have been filed by the residents each year on their distributive shares of the income but no nonresident returns have been filed. Advice is requested whether the nonresident members are taxable upon their distributive shares.

Section 17008 sets forth the tax concept of "partnership" which includes all joint enterprises not taxable as trusts, corporations or as some other taxable entity. Since X Co. is a joint enterprise and cannot be classified into some other category, it must be treated as a partnership under section 17008.

Under the "mobilia sequunter personam" rule, intangibles are taxed at the domicile of their owner unless they have gained a business situs elsewhere. (Miller v McColgan, 17 Cal 2d 432.) Whether the present intangibles have gained a business situs within California may be determined by Regulation 17211-14(f)(3) of the 1954 Personal Income Tax Law. X Co. is actively engaged in a continuous course of business in California. Its information return shows payments of salaries, rent and other business expenses, together with a large volume of capital sales, dividend income and other items indicating business activity. The intangibles in question constitute the partnership's chief item of capital controlled by the resident partner from California. Therefore, the intangibles have acquired a business situs in California under Regulation 17211-14(f)(3).