

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 166

November 6, 1957

SALE OF PROPERTY: DATE OF CLOSING: PARTIES' INTENT IS CONTROLLING

Syllabus:

The closing of a transaction, which is the taxable event of a sale or exchange, involving a contract to sell is the date the contract becomes fully executed which must be determined from the intention of the parties.

Taxpayer on March 25, 1955, contracted to sell certain real property. The contract provided that the escrow was to close on March 31, 1955, or later when the title company issued a title insurance policy. The contract also contained other clauses pertaining to the transfer, all of which were dependent upon the close of the escrow. On March 31, 1955, the Deed of Trust, Assignment of Rents and the buyer's promissory note were executed. On April 1st the buyer deposited the down payment. On April 4, 1955, the Title Insurance policy was issued, documents were recorded and the escrow closed. Taxpayer reports its franchise tax on a March 31 fiscal year basis. Advice is requested as to what date the transaction was closed and completed for tax purposes.

The taxable event of a sale or exchange occurs upon the closing of the transaction. Since there must be a closing it must be determined whether a contract is an executory contract to sell or an executed contract of sale. Such a determination is based on the intention of the parties, as gathered from the contract and surrounding circumstances which may be legitimately considered as evidence of the parties intention. U.S. v Amalgamated Sugar Co., 72 F2d 755. Under the contract neither title nor possession was to pass until the escrow closed. Consequently, it is concluded the parties did not intend a complete sale until all conditions were met. The conditions were fulfilled and the escrow closed on April 4, 1955. Therefore, the sale was not closed and completed until April 4, 1955.