

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 170

October 29, 1957

GROSS INCOME: TAXABILITY OF GAIN FROM THE SALE OF STOLEN PROPERTY

Syllabus:

Proceeds from the sale of stolen property are taxable to the extent the sale price exceeds the actual cost to the seller.

Taxpayer, who was engaged in the retail gasoline business, purchased considerable quantities of stolen gasoline which he sold in the course of his business.

Advice is requested as to whether the taxpayer is subject to tax on the proceeds of the sale of the stolen gasoline and as to what is the basis of the stolen gasoline.

Taxpayer's lack of title to the gasoline does not prevent his being taxed on the proceeds of the sales. It was held in United States v Lozia, 104 Fed Supp 846, that the proceeds from the sale of stolen property are "gains, profits, and income from dealing in property", under Section 22(a) (now Section 61) of the Internal Revenue Code (Section 17101 (now Section 17071) of our law). The nontaxability of embezzled funds has been limited to cases involving embezzlement only. Rutkin v United States, 343 U.S. 130.

The next question is whether the cost of the stolen gas may be allowed in computing his basis. The cost of the stolen gasoline is clearly the cost of goods sold. Personal Income Tax Section 17297 does not authorize a disallowance in this case and, under the Internal Revenue Code, the courts have been reluctant to disallow the cost of goods without statutory provisions to that effect. Davis v United States, 87 F2d 323. Some courts have argued that the disallowance of such items would be unconstitutional as the effect would be the levying of a tax on gross receipts which is in violation of the 16th Amendment. Therefore, taxpayer's basis is his actual cost of the stolen gasoline.