

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 213

June 24, 1958

REORGANIZATION: UNDER SECTION 23251(d)

Syllabus:

The application of section 23251(d) of the Bank and Corporation Tax Law does not depend upon whether the distribution was made to a stockholder owning 80% or more control.

In September, 1951, the capital stock of X Co. was purchased by A Co. and B Co., a partnership. A Co. acquired 78.41% of the stock and the partnership acquired 21.59%. In February, 1952 X Co. distributed its assets in liquidation to the two stockholders. At approximately the same time B Co. sold its share of the assets to A Co. who then changed its name to X Co. Advice is requested whether 80% control of the subsidiary is necessary in the application of section 23251(d) of the Bank and Corporation Tax Law and if the transfer of assets from X Co was a reorganization under section 23251(d) in regards to A Co.

The purpose of the reorganization provisions of section 23251 is to continue without interruption the taxation of a business if, in its revised form, there has been no substantial change in ownership. In furtherance of this basic purpose the section must be given a liberal interpretation. San Joaquin Ginning Co v McColgan, 20 Cal 2d 254. Section 23251(d) contains no express limitation with regard to control, however, there is language identical to that contained in section 23251(a) which in discussing transfers or liquidation states "all or a substantial portion of its business or property -- ". It has been held that under certain circumstances, this language in section 23251(a) can mean considerably less than 80% of the total California assets of the corporation, therefore, the same interpretation must apply to section 23251(d). If a stockholder receives less than 80% of the assets on liquidation he probably owned less than 80% of the stock. Therefore, if the type of liquidation is included within section 23251(d), the application of this section does not depend upon whether the distribution was made to a stockholder owning 80% or more control. Consequently, the distribution to A Co. constituted a reorganization under section 23251(d).