CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 248

October 30, 1959

RESIDENCE – WHEN RESIDENCE ACQUIRED CORPORATE LIQUIDATION – WHEN GAIN ACCRUES

Syllabus:

(1) Taxpayers became residents of California in June, 1954.

(2) The gain on liquidation of the corporation located in Country X accrued prior to the time the taxpayers became residents of California.

Taxpayers were residents of Country X where they owned all of the stock of a domestic corporation of Country X.

The taxpayers remained in Country X except for several vacations of two months duration in California. In 1950, during their first vacation in this State they purchased a home in California, however, they did not occupy it until their second two month vacation in 1952. At all other times the house remained unoccupied.

During early 1954, the corporation was liquidated. At the time the corporation was dissolved its assets consisted of cash and fully secured promissory notes. The liabilities consisted of employment severance pay due employees under the law of Country X and accrued income tax of Country X.

In June 1954, the taxpayers moved to California and occupied their home there. Since their arrival in California during June, 1954, taxpayers were outside this State for approximately one month during the remainder of the year. During 1955, they were away from California about three months. From September, 1954, to December, 1955, taxpayers received liquidating dividends in connection with the liquidation of the corporation in Country X.

(1) A resident is every person who is in California for other than a temporary or transitory purpose (Section 17014). The purpose of this definition is to include in the class of individuals who are taxable upon their entire net income, all persons who are physically present in California enjoying the benefit and protection of its laws and government (Regulation 17013-17015(a)).

While residents of Country X they purchased a home in California and lived in it while on vacation here. The record shows that this was their only dwelling house in the United States. In 1954 the taxpayers moved to California, occupied their home here about June 14, and remained here for the remainder of the year except for several business trips aggregating about one month. During the fall of 1954, their children enrolled in local schools. In 1955, the taxpayers were outside this State in the aggregate of three months.

(2) The taxpayers owned all of the stock of the corporation on the date all of the corporate assets were sold for cash and fully secured promissory notes which are considered as the equivalent of cash for tax purposes. When the corporation dissolved the shareholders surrendered their stock and the corporation began liquidation, the only liabilities being severance pay due employees and accrued income tax. Thus, when all of the stock was surrendered the only remaining asset was cash and the disbursements to be charged against such asset were known with enough certainty to ascertain the amount of the final dividend. Under these facts, the liquidation was completed for income tax purposes. Commissioner v. Winthrop, 98 F2d 74, 21 AFTR 657.

It is the opinion of the Franchise Tax Board that the word "accrued" as used in Section 17596 is to be interpreted broadly. See Legal Rulings 194, 132 and 048. Such interpretation is based upon Helvering v. Enright, 312 U.S. 636, 85 L.ED 1093 which construed similar language in a federal statute concerning the accrual of income of decedents to the date of death. The Supreme Court held in the Enright case that income is "accrued" when it is capable of approximate valuation. In the case at hand, the corporation had completed its liquidation (for tax purposes) on May 17, 1954, and since the amount of the liquidating dividend was capable of valuation the taxpayer's gain "accrued", within the meaning of Section 17596, on that date. Inasmuch as the gain "accrued" to the taxpayers prior to the date they became residents (June 14, 1954) such income is not subject to tax.