

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 331

August 2, 1968

FINANCIAL CORPORATIONS: OFFSET FOR PERSONAL PROPERTY TAX: LEASED PROPERTY

Syllabus:

Financial corporations may not offset against the franchise tax the personal property taxes paid on property leased to them.

Section 23184 allows financial corporations to offset against the franchise tax the amounts paid as personal property taxes. The purpose of this section is to limit the overall tax burden of other financial corporations to that of banking corporations, a category of taxpayers who are immune or exempt from personal property taxes. A federal statute, Section 5219 of the Revised Statutes (12 U.S.C. Section 548), does not permit the imposition of a tax upon the personal property of national banks, and also requires that the rate of tax on national banks be no higher than the rate on other financial corporations. See Citrus Belt Savings and Loan Association v. Franchise Tax Board, 218 Cal.App.2d 584.

In the situation where the lessee is a bank and the lease provides that the lessee shall pay and discharge all taxes whether assessed to the lessor or lessee, the tax will necessarily be assessed to the lessor since the lessee bank is exempt from personal property taxes. The bank will be required to pay an equivalent amount as additional rent, and its immunity or exemption from personal property tax is of no economic advantage to it. Therefore, where a financial corporation, under a similar lease, is required to pay or discharge the personal property tax or reimburse the lessor, parity of treatment requires that there should be no offset of such payment against its franchise tax. To permit such an offset may violate the federal prohibition against discriminatory treatment of national banks.

There is also involved the question of whether the payment made by the lessee is properly characterized as a personal property tax paid by the lessee. Inasmuch as the lease does not transfer full ownership of the property to the lessee, it would seem that the payment under the lease is a part of the rent consideration for use of the property rather than a tax obligation arising from ownership of the property. Absent any provision of the lease, the lessor as the owner of the property would be required to pay the personal property tax. Rev. Rul. 55-540, 1955-2 Cum. Bull. 39, 43, which contains an extensive discussion on the treatment of leases of equipment, provides that the payment of such expenses by the lessee is deemed to be additional rental income to the lessor

and an additional deduction to the lessee. The regulations under rental expense, both California and Federal, provide that "Taxes paid by a tenant to or for a landlord for business property are additional rent and constitute a deductible item to the tenant and taxable income to the landlord, the amount of the tax being deductible by the latter."

Accordingly, it is concluded that the payments should not be treated as personal property taxes for purposes of the offset to the franchise tax.