

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 340

March 18, 1970

NONRESIDENTS: SOURCE OF INCOME

Syllabus:

Percentage of gross sales payments received quarterly by nonresidents for the sale of their patent to a California corporation are not income from sources within this state.

Advice has been requested as to the taxability of payments received from a California corporation by nonresidents. Taxpayers receive quarterly payments in the amount of 3 percent of the corporation's gross sales of a product manufactured under exclusive patent rights perfected and sold to the corporation while taxpayers were California residents.

Under California Revenue and Taxation Code Section 17951, nonresidents are taxable only upon income from sources within this state. Income has a source within this state if it is derived from the several sources enumerated in Reg. 17951-17954, regardless of the residence of the recipient, or if it accrued prior to a change of residence within the meaning of California Revenue and Taxation Code Section 17596. The income in question here is from the sale of intangible personal property not having a business situs in California at the time of sale or thereafter, so it does not fall within the scope of Reg. 17951-17954. Income has accrued within the meaning of Section 17596 when the right to receive it is fixed and the amount thereof can be reasonably accurately determined. Appeal of Edward B. and Marian R. Flaherty, Cal. St. Bd. of Equal., January 6, 1969, CCH 204-011, P-H 58, 437-I. Because the amount of periodic payments to be received after the change of residence by taxpayers for the sale of the patent was entirely dependent upon the unknown volume of future sales by the corporation, it could not be determined with reasonable accuracy at the time of residence change. Therefore, this income did not accrue prior to the change of residence status within the meaning of Section 17596. Thus, the payments received after the change of residence are not taxable as income from a California source.