State of California
Franchise Tax Board
Legal Division MS A260
PO Box 1720
Rancho Cordova, CA 95741-1720
tel: 916.845.4324 fax: 916.364.2713
Michael.Laisne@ftb.ca.gov

chair Betty T. Yee | member Jerome E. Horton | member Michael Cohen

02.17.16 CHIEF COUNSEL RULING 2016-02

****** * *****
**** * ****
*** *********
********* ** *****

Re: Request for Chief Counsel Ruling

Dear M*. ****:

In your letter you requested confirmation that ***** ***** ** **** ***** ********* ****** **** ("Taxpayer") is not a corporation for purposes of the annual Minimum Franchise Tax imposed under California Revenue and Tax Code (RTC) section 23153.

FACTS

Taxpayer, a Delaware Business Trust, qualifies annually, and intends to continue to qualify annually, as a regulated investment company ("RIC") for Federal and California tax purposes.[1]

ISSUE

Whether a RIC organized as a business trust is a "corporation" for purposes of the Minimum Franchise Tax imposed under RTC section 23153.

HOLDING

A RIC organized as a Delaware Business Trust is not a "corporation" as that term is used in RTC section 23153 and, accordingly, a RIC organized as a business trust is not liable for the Minimum Franchise Tax imposed under that section.

DISCUSSION

Chapter 2 of the RTC governs the Corporation Franchise Tax ("Chapter 2 Corporation Franchise Tax"). The Chapter 2 Corporation Franchise Tax requires qualifying corporations to pay at least a minimum franchise tax no matter their income

[1] For purposes of this Chief Counsel Ruling, "Delaware Business Trust" means a business trust that is a Delaware Statutory Trust. As is the case with the Taxpayer, a Delaware Statutory Trust can be a business trust under title 12 of the Delaware Code, section 3801, subdivision (g). Therefore, the Taxpayer is considered a business trust for California Corporation Franchise Tax purposes.

("Minimum Franchise Tax").[2] Chapter 3 imposes the Corporation Income Tax on corporations ("Chapter 3 Corporation Income Tax").[3]

RTC section 24871, subdivision (a)(2), states: "Every regulated investment company shall be subject to the taxes imposed under Chapter 2 (commencing with Section 23101) and Chapter 3 (commencing with Section 23501). . ."

RTC section 23153, subdivision (a), contained in Chapter 2, states: "Every corporation described in subdivision (b) shall be subject to the minimum franchise tax specified in subdivision (d) . . . ." Further, RTC section 23153, subdivision (b) states:

> (b) Unless expressly exempted by this part or the California Constitution, subdivision (a) shall apply to each of the following:
> (1) Every corporation that is incorporated under the laws of this state.
> (2) Every corporation that is qualified to transact intrastate business in this state pursuant to Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code.
> (3) Every corporation that is doing business in this state.

The primary question regarding the applicability of the Minimum Franchise Tax to RIC business trusts is whether business trusts are treated as a "corporation" for purposes of the Chapter 2 Corporation Franchise Tax.

RTC section 23038, subdivision (a) states, the term "'[c]orporation' includes every corporation except corporations expressly exempt from the tax by this part or the Constitution of this state." Both Chapter 2 Corporation Franchise Tax and Chapter 3 Corporation Income Tax use the definition of "corporation" contained in RTC section 23038, subdivision (a). However, RTC section 23038, subdivision (b)(2)(A), explicitly expands "corporation" to include business trusts for the Chapter 3 Corporation Income Tax. The definition of "corporation" is not expanded to include business trusts for purposes of Chapter 2 Corporation Franchise Tax. Therefore, although a business trust is considered a "corporation" subject to the Chapter 3 Corporation Income Tax, a business trust is not a "corporation" for purposes of the Minimum Franchise Tax.

Here, the Taxpayer is a business trust that is treated as a RIC for federal and state tax purposes. Because business trusts are not included in the definition of a "corporation" in RTC sections 23038 and 24871 for the Chapter 2 Corporation Franchise Tax, the Taxpayer is not a corporation under Chapter 2 Corporation Franchise Tax and not subject to the Minimum Franchise Tax.

---

[2] RTC section 23153(a).

[3] RTC section 23501.

Please be advised that the tax consequences expressed in this Chief Counsel Ruling are applicable only to the named taxpayer and are based upon and limited to the facts you have submitted. In the event of a change in relevant legislation, or judicial or administrative case law, a change in federal interpretation of federal law in cases where our opinion is based upon such an interpretation, or a change in the material facts or circumstances relating to your request upon which this opinion is based, this opinion may no longer be applicable. It is your responsibility to be aware of these changes, should they occur.

This letter is a legal ruling by the Franchise Tax Board's Chief Counsel within the meaning of paragraph (1) of subdivision (a) of section 21012 of the Revenue and Taxation Code. Please attach a copy of this letter and your request to the appropriate return(s) (if any) when filed or in response to any notices or inquiries which might be issued.

Sincerely,

Michael R. Laisne
Tax Counsel