



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
Legal Branch
PO Box 1720
Rancho Cordova, CA 95741-1720
(916) 845-5316 Fax (916) 845-3648

KATHLEEN CONNELL
Chair

CLAUDE PARRISH
Member

B. TIMOTHY GAGE
Member

March 20, 2001

Information Letter No. 200800

Dear *****,

In your letter dated ***** , you questioned whether "the common-law labor of a professional actor [is] an activity that is subject to tax under California law." You ask for constitutional, statutory and case authority supporting our response.

You state that you record advertisements in your home for later broadcast on television. You explain that the recording is accomplished through an integrated electronic network, which transmits your performances to an advertising agency for later broadcast. By your address, we reason that you are a resident of California.

Revenue and Taxation Code section 17041(a) imposes California personal income tax on the entire taxable income of a California resident. Taxable income means gross income minus deductions allowed by statute. (Revenue and Taxation Code section 17073, incorporating Internal Revenue Code section 63.) Gross income means all income from whatever source derived. (Revenue and Taxation Code section 17071, incorporating Internal Revenue Code section 61.) Income is defined broadly by the United States Supreme Court to include all "accessions to wealth." (*Comr v. Glenshaw Glass* (1955) 348 U.S. 426.) While there exist certain categories of income that are specifically excluded from gross income by statute (Revenue and Taxation Code sections 17131 through 17156.5), and specific deductions allowed in computing taxable income (Revenue and Taxation Code sections 17201 through 17299.9), none of these exclusions or deductions apply to exempt from taxation income from the activity you describe. Accordingly, all the income you receive as a California resident from acting activities is included in taxable income.

Article 3, section 3.5 of the California Constitution prohibits an administrative agency, such as the Franchise Tax Board, from refusing to enforce California statutes on preemption grounds unless the statute has been held to be unconstitutional or in violation of federal statutes by an appellate court. We find no appellate court decision that has declared Revenue and Taxation Code section 17041(a) to be unconstitutional or in violation of federal statutes with regard to the type of income you describe. Accordingly, the Franchise Tax Board may not refuse to apply its provisions in such cases.

March 20, 2001

Page 2

Please be advised that the tax consequences expressed in this opinion are based upon and limited to the facts you submitted. This letter is provided for information only and is not to be considered "written advice from the Board" within the meaning of Revenue and Taxation Code section 21012.

Please feel free to contact me at the above number if you need further assistance.

Richard Gould
Tax Counsel