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Date: 09.01.15

Information Letter 2015-04

Subject: Re: Chief Counsel Ruling Request – Application of Internal Revenue Code Section 83(a)

Dear [redacted]

This letter is in response to your correspondence dated [redacted], in which you requested a Chief Counsel Ruling regarding the application of Internal Revenue Code section 83(a). Specifically, you asked whether California agreed that Internal Revenue Code section 83(a) "applies to all property transferred in connection with the performance of services and the amount remaining after the adjusted basis is the realized, taxable gain?"

As noted in FTB Notice 2009-08, FTB will not rule where "[s]tate and federal law on the issue are the same and the application of federal law is dispositive of the issue." In such situations, California treatment is predicated on the federal treatment, and FTB's policy is to follow the federal determination on the issue.

While we decline to issue a Chief Counsel Ruling addressing the specific factual scenario presented in your request, we are providing you with our general explanation of how conformity to the Internal Revenue Code applies generally, and when federal regulations, rulings and guidance are persuasive authority for California franchise and income tax purposes.

California Conformity to Internal Revenue Code

In general, when California's Revenue and Taxation Code applies some section, subchapter, or some portion thereof of the Internal Revenue Code, for purposes of Part 10 (commencing with Section 17001, Part 10.5 (commencing with Section 18401), or Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code, it is often modified or revised for California purposes.

To understand our general conformity to that portion, or any portion, of the Internal Revenue Code we begin by looking to Revenue and Taxation Code sections 23051.5 and 17024.5, which explain that the term "Internal Revenue Code" means such Code as of the "specified date" for the

applicable taxable year. For example, subparagraph (O) of paragraph (1) of subdivision (a) of Revenue and Taxation Code section 17024.5 states that for taxable years beginning on or after January 1, 2010, the term "Internal Revenue Code" means the Internal Revenue Code as enacted on January 1, 2009. To the extent that amendments are made after that specified date, they would not apply for purposes of the Revenue and Taxation Code unless such application was otherwise provided for.

California Revenue and Taxation Code section 17081 applies Part II of Subchapter B of Chapter 1 of Subtitle A of the Internal Revenue Code "except as otherwise provided." Internal Revenue Code Section 83(a) is found within Part II of Subchapter B of Chapter 1 of Subtitle A of the Internal Revenue Code. Therefore, California conforms to Internal Revenue Code section 83(a).

As discussed above, where California law and federal law are the same, we generally do not issue rulings on the issue. Rather, to the extent a federal ruling is provided, such federal ruling on the issue is equally applicable for California purposes.

Federal Rulings and Guidance

As explained below, it is well settled that where federal law and California law are the same, federal rulings dealing with the Internal Revenue Code are persuasive authority in interpreting the California statute. *J. H.McKnight Ranch v. FTB* (2003) 110 Cal.App.4th 978, at fn.1, citing *Calhoun v. Franchise Tax Bd*. (1978) 20 Cal.3d 881, 884.

Where the California Revenue and Taxation Code conforms to the Internal Revenue Code, federal administrative guidance applicable to the Internal Revenue Code shall, insofar as possible, govern the interpretation of conforming state statutes, with due account for state terminology, state effective dates, and other obvious differences between state and federal law.

Federal administrative guidance may include: federal revenue rulings, notices, revenue procedures, announcements, and other published administrative guidance promulgated by the U.S. Treasury or the Internal Revenue Service (IRS). Private letter rulings will only be considered federal administrative guidance with respect to the particular taxpayer for whom the ruling was issued; otherwise, federal administrative guidance does not include private letter rulings or any other administrative guidance issued by the Commissioner or Chief Counsel of the IRS with respect to a particular taxpayer.

Conclusion

As discussed above, with regard to the application of Internal Revenue Code section 83(a), California law and federal law are the same. Thus, we respectfully decline to issue a ruling on this issue. To the extent that federal rulings and guidance are available and applicable to Internal Revenue Code section 83(a), California will consider the federal guidance persuasive and may govern the interpretation and application of California Revenue and Taxation Code section 17081 incorporation of Internal Revenue Code section 83(a).

Please be advised that the tax law discussed in this letter is considered a well-established interpretation or principle of tax law. This letter is provided for general information only and is not intended nor shall be considered "written advice from the Board" within the meaning of Section 21012 of the Revenue and Taxation Code.

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