



chair **John Chiang**
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State of California
Franchise Tax Board

11.28.12

Information Letter 2012-01

Subject: Chief Counsel Ruling Request

Dear M*. *****:

Your Chief Counsel Ruling request dated May 9, 2012, has been referred to me for response. In your request you ask whether ***** , Inc. (hereinafter "*****") was "doing business" within this state as that term is defined within California Revenue and Taxation Code ("R&TC") section 23101, such that ***** was subject to the minimum franchise tax in the years 2007-2011. You note in your request that for each of the subject years, ***** filed a return acknowledging California source income, and also made payment of minimum franchise tax, interest and penalties.

As a technical matter, a Chief Counsel ruling will only be issued where a taxpayer seeks information on a proposed transaction or a proposed filing position. This is because, under the Franchise Tax Board (hereinafter "FTB") Rulings Guidelines contained in FTB Notice 2009-08, at paragraph C.1, the Chief Counsel will decline to issue a Chief Counsel Ruling where the request involves an area in which the Internal Revenue Service has announced that it will not issue an advance ruling. (See FTB Notice 2009-08, at ¶ C.1.) Since the Internal Revenue Service has announced that a Letter Ruling may issue only when a taxpayer submits a written inquiry "prior to the filing of returns," it follows that your ruling request does not meet Internal Revenue Service guidance because ***** has already filed returns and made payment for the years at issue. (See Rev. Proc. 2012-1, IRB, section 2 at ¶ .01.) Accordingly, we must respectfully decline to issue a Chief Counsel ruling. However, your inquiry will be considered as a claim for refund under R&TC section 19322 if ***** desires to pursue this matter.

Under R&TC section 19322, a valid claim must be in writing, signed by the taxpayer or the taxpayer's authorized representative, and state the specific grounds upon which it is founded. (R&TC 19322.) Since your correspondence meets these requirements, it constitutes a valid claim for refund for the difference between any corporation income tax due, if any, and the minimum Corporation Franchise Tax paid by the taxpayer.

Accordingly, unless you advise me that you do not want to pursue this as a claim for refund, within 30 days from the date of this letter I will forward your letter forthwith for consideration by our claims unit who will contact you directly.

Please feel free to contact the undersigned if you have any questions about this letter.

Sincerely,

L. Red Gobuty
Tax Counsel III