

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 035

June 25, 1958

NONRESIDENT: TAXABILITY OF INCOME; BUSINESS SITUS OF PROPERTY

Syllabus:

The airplane of which a nonresident held a partial interest was found not to have acquired a business situs in California, consequently the nonresident was not taxable on income arising from the operation and sale of the airplane.

A, a resident of State Y, and B, a California resident jointly owned an airplane. B negotiated a lease with X Airlines, for use between California and Hawaii. Without ever putting the airplane to such use, the lessee sublet it for use in Europe. Subsequently the plane was used in several countries in Europe and Asia. When the lease ran out, X Airlines purchased the plane from B in accordance with a modification in the original lease. Advice is requested whether A is taxable on his share of the rental income and gain from the sale of the airplane as income derived from California sources.

The maxim "mobilia sequuntur personam" controls the taxation of personal property, tangible as well as intangible, except that where property has acquired a business situs independent of the domicile of the owner. In the instant case the airplane cannot be said to have acquired a business situs in California, for California was never a terminus in the operations to which it was put. The transactions engaged in by B in California concerning the plane cannot give it a business situs here because the necessary element of physical presence is missing.

It is clear, therefore, that the instant case does not come within the exception to the "mobilia" rule. The income produced by the plane is taxable at the domicile of the owners, thereby precluding taxation of A's share of such income.