

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 089

December 5, 1958

FRANCHISE TAX: COMMERCIAL DOMICILE: A CORPORATION IS COMMERCIALY DOMICILED AT THE PLACE WHERE REALISTIC CONTROL OF ITS FUNCTIONS IS CENTERED

Syllabus:

Taxpayer, a foreign corporation engaged in the construction business in many states, has two principal offices, one in California and one outside California, its legal domicile. The principal corporate officers are presently located in California. Although the majority of the Board of Director's meetings are held at the legal domicile, the Operating Committee holds all its meetings in California. This committee composed of the officers and key personnel actually controls the management functions of the corporation. These functions include the review and approval of all contract bids, the extent of participation in joint ventures, and approval of all equipment purchases. The out of state office must obtain the approval of this committee before submitting bids on contracts coming to their attention. The out of state office is the home office for accounting purposes but copies of the general ledger and cash records are maintained in California, and all financial statements are prepared in California from these records. The majority of taxpayer's financing requirements are furnished by an out of state bank; however, the negotiations for these loans are conducted by the California office. Advice is requested as to whether taxpayer is commercially domiciled in California.

The decision in Southern Pacific Co. v. McColgan, 68 CA 2d 48, and similar cases in other jurisdictions, establish that in general a corporation is commercially domiciled for taxation purposes at the place where realistic control of its functions is centered. If such realistic control is exercised in a particular state, and the corporation engages in substantial operational activity in that same state, that jurisdiction will be considered to have furnished the corporation with the majority of its protection and benefits, and accordingly have constitutional power to tax the corporation income from intangibles.

In the instant case the California office was the headquarters for the principal administrative officers. These officers made all important administrative decisions with respect to contract bids and similar vital corporate matters. Such effective control to the exclusion of the out of state office, emphasizes the fact that the California office was where taxpayer's management actually functioned. Although taxpayer had substantial operations in the state of its legal domicile, it does not appear, in view of the other facts, that this factor would destroy California's right to tax based upon commercial domicile.