CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 245

October 28, 1959

EQUITABLE ESTOPPEL -- STATUTE OF LIMITATIONS -- SALE OF INSTALLMENT OBLIGATIONS

Syllabus:

(1) The assignment of installment contracts constitutes a satisfaction of an installment obligation under Section 24670 of the Bank and Corporation Tax Law.

(2) Under the doctrine of equitable estoppel an overpayment in a later year may be applied to a deficiency in an earlier year, which is barred by the statute of limitations.

The taxpayer, a California corporation is in the business of selling goods at retail. Substantially all of its sales were made on the installment plan and the corporation reported on the installment basis. After each sale was consummated the installment contract was immediately assigned to a bank, however, the taxpayer continued to report income therefrom on the installment basis.

An assessment was made for income year 1954, which also included unreported gain due to the assignment contracts for the prior two income years. The taxpayer paid the assessment and has filed a claim for refund for that portion of the assessment attributable to income accrued during income years 1952 and 1953.

(1) Where, the taxpayer assigns installment sales contracts, using language of sale in the assignment and the assignee (bank) treats the transaction as a purchase and pays the purchase price to the assignor, the transaction is a sale rather than a pledge. East Coast Equipment Co. v. Comm., 222 Fed 2nd 676, 47 AFTR 912. Consequently, the privilege of reporting on the installment method is not available to the taxpayer since Section 24670 provides that the gain or loss resulting from the distribution, transfer, or sale of installment obligations shall result in gain or loss in the year of which the installment obligations are disposed of.

(2) The equitable doctrine of estoppel is applicable in a proper case to prevent a fraudulent or inequitable resort to the statute of limitations as a defense and may be applied pursuant to Section 25902 -- Bank and Corporation Tax Law. The courts have developed the doctrine of quasi estoppel or duty of consistency. The doctrine is a principle applied by some courts under which the conventional elements of estoppel are not required.

The reasoning is that where a refund is claimed, as in the present case, the taxpayer asks a return of money paid by him on the assumption that the State unjustly retains it, therefore, such claim is subject to a set-off to the extent that he has escaped payment of an earlier tax. Bennet v. Helvering, 137 Fed 2d 537, 31 AFTR 441; Lofquist Realty Co. v. Comm., 102 Fed 2d 945; 22 AFTR 978.

Since income years 1952 and 1953 are barred by the statute of limitations the doctrine of estoppel may be applied. The amount overpaid for income year 1954 may be offset against any deficiency for the prior two years and the balance refunded.