

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 246

October 30, 1959

RATES, FISCAL YEAR CORPORATIONS AFFECTED BY SECTION 18, CH. 1127, STATS. 1959

Syllabus:

(1) In computing the tax of a fiscal year corporation, pursuant to Ch. 1127, Stats. 1959, (A.B. 1175) the proportion of the tax for each of the calendar years will be determined by the portion of its taxable year falling within the two calendar years of the taxable year.

(2) In computing the portion of the period falling within the calendar year the computation is made on a monthly basis, not a daily basis.

(1) Section 24251 prescribes the method for computing the tax of fiscal year corporations whenever there has been a rate change. This section provides for a proration depending on the number of months of the taxable period in each calendar year.

If a corporation is on a fully prepaid basis, (12 months) it makes little difference whether the proration is made on an income or a taxable year basis. In the case of a commencing corporation or a corporation which has changed its accounting period, and the resulting income period is less than a full twelve months, not only will the taxpayer pay the increased rate on a larger percentage of its income but will also pay the increased rate much sooner than a taxpayer on a full prepaid basis.

If Section 24251 is interpreted to provide that the proration be based upon the months of the taxable year falling within each calendar year, there is no discrimination against the commencing corporation or the corporation changing its accounting period.

The proration of tax between calendar years under Section 24251 will be done on a taxable year basis. Corporations will pay the 4% rate for all returns filed for taxable years ending on or before December 31, 1959, and will pay the 5.5% rate on so much of their accounting period as falls within the taxable year 1960.

Section 18 of the statute provides that corporations whose income years began prior to January 1, 1959 and end on or before November 30, 1959, are to compute their tax as provided in Section 24251.

This provision does not apply to commencing corporations. Section 24251 simply states that the second year computation is determined under the law and rates applicable to the second calendar year. Because of this broad language it is possible to construe the section as providing for a tax computation either on an income year or a taxable year basis. Since a taxable year computation eliminates any inequities caused by an income year computation it is to be preferred. Artukovich v. Astendorf, 21 Cal. 2d. 329.

(2) Section 24251 states that fiscal year taxpayers, whenever the law or rates are changed, are to prorate their taxes as described above. In providing for such proration the section does not specify whether such determination is to be made upon a daily or monthly basis. Section 24251 is based upon section 105 of the Federal Revenue Act of 1932, which was first added by section 105 of the Federal Revenue Act of 1928. See Section 4 of the 1933 amendments to the Bank and Corporation Franchise Tax Act, which in all material respects is identical to the existing section. Stats. 1933, c. 303, p. 870. Proration used under the old Federal Acts is explained in an article entitled Calendar v. Fiscal Year, Taxes -- The Tax Magazine, April, 1942, p. 211, at page 212. The tax for fiscal years ending in 1928 or 1932 was prorated according to the number of months in each of the two calendar years, not the number of days.

In discussing 1933 amendments to the Bank and Corporation Franchise Tax Act, Roger J. Traynor and Frank M. Keesling, in an article appearing in 23 California Law Review, page 51, stated that the taxes -- "shall be computed partly under the old law and partly under the new law in the proportion which the number of months in each of the two calendar years bears to the entire fiscal year which falls partly in both of such calendar years".

In view of the above obviously section 105 of the Revenue Act of 1932, from which the predecessor of Section 24251 was copied, required fiscal year taxpayers in case of a change in rates to prorate their tax upon a monthly basis. Since such was the federal practice at the time the predecessor of Section 24251 was copied from a federal statute, the proper rule of construction is the rule stated in the case of Meanley v. McColgan, 49 Cal. App. 2d 313. The court said that where certain provisions of state statute are copied from a federal statute which has been judicially interpreted by federal courts prior to state's adoption thereof, federal decisions constitute not only argumentative authority, but are conclusive on proper interpretation of state statute so adopted. The same construction should be applied even though such statute had only received an administrative interpretation, particularly when such interpretation was publicly stated, affected a substantial number of taxpayers and was accepted by all affected taxpayers without litigation.

Since it has been concluded that the proration should be made upon a monthly basis, the number of days constituting a month should, in the case of a commencing corporation or other corporation being subjected to tax, be the number of days set forth in answer to question 1 of Legal Ruling 148, (CCH

201-102; P-H 13,565) and in the case of corporations which dissolve or withdraw the days specified in answer to question 3 of said legal ruling.

There are many instances in which the Franchise Tax Board has disregarded periods of less than one-half of a month. This long standing administrative practice of prorating taxes on a monthly basis is entitled to respect by the courts and, unless clearly erroneous, is a significant factor to be considered in ascertaining the meaning of a statute. Mudd v. McColgan, 30 Cal 2d, 463; Bank of Alameda County v. McColgan, 69 C.A. (2d) 464.