

## CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 361

May 11, 1973

### DEDUCTIONS: PERSONAL PROPERTY TAXES

#### Syllabus:

Advice has been requested as to whether or not "personal property taxes," as used in § 23186 of the California Revenue and Taxation Code, include taxes paid on the following classes of property: (1) airplanes, (2) baled cotton, (3) boats (in general), (4) documented vessels, (5) livestock, (6) motor vehicle license fees (in lieu portion), (7) private car tax, and (8) racehorses.

With respect to airplanes (Section 5301 ff. of the California Revenue and Taxation Code): Attorney General Opinion No. 71-93 (September 9, 1971) states in part that the in lieu tax on airplanes is an ad valorem property tax. Also, the taxation of airplanes is treated under Division 1 of the California Revenue and Taxation Code, the title of which Division is "Property Taxation." It is therefore recommended that the term "personal property taxes" does include taxes paid on airplanes.

With respect to baled cotton (Section 991 of the California Revenue and Taxation Code): Attorney General Opinion No. 71-93 (September 9, 1971) further states that the in lieu tax on baled cotton is an ad valorem property tax. Also, as is true with airplanes, the taxation of baled cotton is treated under Division 1 of the California Revenue and Taxation Code. It is therefore recommended that the term "personal property taxes" does include taxes paid on baled cotton.

With respect to boats (in general) (Section 1141 of the California Revenue and Taxation Code), the documented vessels (Sections 130, 1138 and 227 of the California Revenue and Taxation Code): No opinion of the Attorney General exists as to whether or not the taxes imposed on boats (in general) and documented vessels are property taxes. However, as the taxation of these two classes of property is treated, like airplanes and baled cotton, under Division 1 of the California Revenue and Taxation Code, and as the taxes on boats (in general) (see § 1141) and on documented vessels (see § 227) are ad valorem taxes, as are personal property taxes, it is recommended that the term "personal property taxes" does include taxes paid on both of these classes of property.

With respect to livestock (Section 5501 ff. of the California Revenue and Taxation Code): As Attorney General Opinion 71-93 (September 9, 1971) states that the livestock in lieu tax is not an ad valorem property tax but rather is a state-imposed excise tax on the privilege of tending or grazing livestock in California, it is therefore recommended that the term "personal

property taxes" does not include taxes paid on livestock.

With respect to motor vehicle license fees (in lieu portion): As the California Supreme Court in the case of Ingels v. Riley, 5 Cal.2d 154 (1936), has held that the vehicle license fee is not a property tax but rather is an excise tax on the privilege of operating motor vehicles on the public highways which is in lieu of all taxes according to value on vehicles of a type subject to registration, it is therefore recommended that the term "personal property taxes" does not include the in lieu portion of the motor vehicle license fee.

With respect to the private car tax (Section 11201 ff. of the California Revenue and Taxation Code): As the private car tax has been referred to in the case of People v. Keith Railway Equipment Co., 70 Cal.App.2d 339 (1945), as a tax on a form of tangible personal property at a rate in proportion to value, and as a "personal property tax" is defined as an ad valorem tax which is imposed on an annual basis in respect of personal property, it is recommended that the term "personal property taxes" includes the private car tax since the description of the private car tax in the Keith Railway Equipment Co. case, supra, and the general definition of "personal property tax" are synonymous.

With respect to racehorses (Section 5701 ff. of the California Revenue and Taxation Code): There is neither case authority nor an opinion of the Attorney General which covers racehorses. However, it would appear that the tax on racehorses is very similar to the tax imposed on livestock and the in lieu portion of the motor vehicle license fees since, according to § 5721, the racehorse tax is a tax imposed on the privilege of breeding, training, caring for, or racing a racehorse in California; and therefore, just like the livestock tax and the in lieu portion of the motor vehicle license fees, which are also privilege taxes and have been held to be excise taxes, so it must be that the tax on racehorses is an excise tax and therefore the term "personal property taxes" would not include taxes paid on racehorses.