

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 373

April 11, 1974

EFFECT OF OREGON HOMEOWNER AND RENTER PROPERTY TAX REFUND CLAIM UPON CALIFORNIA TAX CREDIT

Syllabus:

The State of Oregon has recently enacted legislation entitled the "Oregon Homeowner and Renter Property Tax Refund Claim Law" (Oregon Statutes §§ 310.630 -- 310.690). In essence, this law allows homeowners and renters to claim a refund as measured by the amount of property tax or rent paid by the taxpayer during the year. The refund is associated with the Oregon income tax only in that the computational formula involves reference to total income limitations, and the personal income tax form may be used to claim the refund.

The refund is payable to qualified persons, either homeowners or renters, no matter what their personal income tax status. The regular Oregon Individual Income Tax Return form (Form 40) provides that the refund, payable in any event, may be offset against any personal income tax due.

The following question is presented:

If an income tax credit is allowed by California as related to Oregon personal income tax, should that credit be based upon Oregon personal income tax due or the net tax due after offset of the Homeowner and Renter's refund?

Decision:

Where tax credits are available, they should be made against California income tax based upon the Oregon tax on Oregon-source income due before the refund is applied.

Discussion:

The Oregon Homeowner and Renter's refund in its present form, went into effect in 1973. In order to qualify for the refund, a taxpayer must fulfill certain conditions. To qualify for a homeowner or renter property tax refund, the taxpayer must:

1. Be an Oregon resident, either a homeowner or a renter, on December 31, 1973.
2. Live in an Oregon homestead on December 31, 1973.

3. Have total household income of less than \$15,000.
4. Have a recorded interest (deed, sales contract or life estate) in the homestead if filing as a homeowner.
5. Be the only person in the household filing a refund claim.

As a practical matter then, the only time a tax credit situation involving the Homeowner and Renter's refund would arise is when the taxpayer with Oregon-source income is a California resident part of the year, and an Oregon resident for part of the year, at least including December 31, 1973. Then, if the taxpayer claims tax credits for that portion of the year that he was a California resident pursuant to the provisions of Revenue and Taxation Code § 18001, the relation of this credit to Oregon tax will arise.

The Oregon Homeowner and Renter's refund claim is in no way associated with the Oregon personal income tax. The claim is made on the Oregon personal income tax form, but the claim form can be attached even though no income tax is due, and a full refund, as allowed by the statute, will be made. In fact, if the taxpayer is not required to file a return at all, the claim may still be made. The refund is a vested right in the qualifying Oregon taxpayer much as it is in the California renter's credit. [See Rev. & Tax. Code § 17053.5(h).] The refund depends only upon the individual meeting the qualifying conditions. The refund is related to the amount of real property tax paid, in the case of a homeowner, or the amount of rent paid, in the case of a renter. The amount of personal income tax due, if any, is irrelevant.

Therefore, in filing, the former California resident would file a California nonresident return (Form 540 NR) claiming a credit for Oregon tax paid on Oregon-source income which was also taxed in California, but only for the period during which he was a California resident. The credit will be applied against California tax (before allowance of the California Renter's Credit, if any) based upon the Oregon personal income tax amounting to double taxation computed before the Oregon Homeowner and Renter's refund is deducted.