CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 207

October 23, 1957

INTEREST: COMPUTATION: EFFECT OF 1957 AMENDMENTS

Syllabus:

Amendments to Personal Income Tax Law and Bank and Corporation Tax Law provide only simple interest is to be included in assessments made or which become final on or after the effective date of January 1, 1958.

Advice has been requested as to the effect of the 1957 amendments relating to the computation of interest and providing for the automatic acceleration of delinquent installments.

The amendments discussed below are operative on January 1, 1958, and change the method of computing interest. Since the amount of interest to be collected and method of computation are "purely statutory", the method to be used must be determined by examining the statute applicable during the entire period from the due date of the tax until payment. See People v Union Oil Co., 48 A.C., No. 10, p. 478, dated May 7, 1957.

In view of the above, sections 18689 and 25901(c) of existing law, applicable to assessments where notice and demand was made on or before December 31, 1957, provide that interest due at the date of notice and demand is added to and becomes a part of the tax. Therefore, as to such amounts interest is to be computed upon the entire amount, including interest due at the time notice and demand is made, until payment.

If an assessment becomes final or after January 1, 1958, sections 18688 and 25901(b), as amended, provide that interest is computed only on the tax from its due date until payment. As to such assessments interest never becomes a part of nor is it added to the tax. In making future interest computations, it is to be noted that sections 18591 and 25665 provide that a deficiency does not arise until 60 days after the mailing of a proposed assessment. Accordingly, where a protest has not been filed, the amended law will apply to all deficiencies mailed on or after November 4, 1957.

The provisions of the amendments are summarized below. Since, except for section 18686(b) discussed below at G, the provisions of both laws are identical, they are grouped together.

A. Interest Charged From Due Date.

Sections 18686 and 25901 provide that interest is imposed from the due date prescribed for payment of the tax, installment or portion of the tax until payment. Except for provisions of the Personal Income Tax Law relating to delinquent installments, this provision is in accordance with existing law. See G below.

B. Extensions of Time Do Not Affect Due Date.

Sections 18687 and 25801(a) provide that if the time for payment of the tax or any installment is extended, interest shall be determined as if no extension had been granted. These provisions are in accordance with existing law.

C. Computation of Interest Upon Deficiencies.

Sections 18688 and 25901(b) provide that interest upon deficiencies is computed from the due date of the tax or date prescribed for payment of the first installment until the tax is paid. Under former law, interest was computed from the due date until the date the deficiency was assessed; thereafter, as provided in sections 18689 and 25901(c), interest was computed on the tax, interest, and penalties until payment.

D. Interest on Penalties.

Sections 18689 and 25901(c) provide that no interest is imposed on penalties, if the penalty is paid within 10 days from the date of notice and demand. If the penalties are not paid within such period, interest is imposed from the date of notice and demand until payment. These provisions are the same as prior law.

E. Interest After Notice and Demand.

Sections 18689 and 25903 provide if notice and demand is made for payment of any amount, interest shall not be imposed if payment is made within 10 days after the date thereof. These provisions are in accordance with existing law.

F. No Interest On Interest.

Sections 18693 and 25904 provide that no interest under Article 5 of Chapter 18 of the Personal Income Tax Law or Article 1 of Chapter 21 of the Personal Income Tax Law shall be payable on any interest provided by such articles. These sections are new, but since the compounding features of sections 18689 and 25901(c) have been repealed, these provisions will have only limited application.

G. Automatic Acceleration of Unpaid Installments.

Section 18686(b) provides that failure to pay any installment on or before its due date causes the whole amount of unpaid tax, interest and penalties to become due immediately. In such case interest on the unpaid amount is computed from the due date of the delinquent installment. Under existing law, in order to accelerate payment it was necessary to make a notice and demand.