

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 222

June 27, 1958

LIQUIDATION: WITHIN ONE CALENDAR MONTH (1953)

Syllabus:

Where taxpayers, only shareholders of two corporations, fail to file the written elections prescribed by section 17688 (1954) Personal Income Tax Law (new section 17402), and in the form prescribed by Franchise Tax Regulation 17688(c), they are not entitled to the benefits of that section in the recognition of gain on the liquidation.

Taxpayers each owned one-third of the shares of stock of two corporations which corporations were dissolved and the assets distributed November 30, 1953. For Federal purposes taxpayers properly filed elections to report the liquidation in accordance with Section 112(b)(7) of the 1939 Internal Revenue Code (one month liquidation provisions). At the time the Federal elections were filed the State law did not contain any provision extending the one month liquidation rule to 1953. In 1954 section 17688 (now section 17402) of the Personal Income Tax Law was amended extending the one month liquidation rules to 1953 and provided that a timely election may be filed with this Board on or before May 13, 1954. Returns were filed by the taxpayers in April of 1954 disclosing that they had elected the one month rule for Federal purposes but, as stated above, no such election was evidenced for State purposes.

Where taxpayers, only shareholders of two corporations, failed to file written elections prescribed by section 17688 (1954) Personal Income Tax Law (now section 17402) and in the form prescribed by Franchise Tax Regulation 17688(c), are such taxpayers entitled to the benefits of that section in the recognition of gain on the liquidation?

Taxpayers seek the benefits of section 17688 of the Personal Income Tax Law (now section 17402) as amended in 1954 but they have failed to qualify thereunder. Section 17688 as so amended, extends its relief only to qualified electing shareholders. It defines a qualified electing shareholder as one whose written election to have the benefits of Subsection (a) has been met and filed in accordance with Subsection (d). Subsection (d) provides that the filing must be within thirty days after the adoption of the plan of liquidation or within one month after the effective date of the 1954 amendment (May 14, 1954) whichever is later.

Here, as the available facts show, elections were not made as prescribed by regulation 17688(c).

It is true that taxpayers' income was determined and reference was made to Federal Section 112(b)(7) of the 1939 Internal Revenue Code but except through notification to this office by means of the returns of the Federal election, no election was made for State purposes as prescribed by law.

Irrespective of the seeming narrowness of such a ruling, it must be borne in mind that no officer of the government can waive, extend or nullify statutes of the State. To extend the statute to encompass situations of this character is a legislative, not an administrative function.