

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 229

October 27, 1959

PAYMENTS FOR THE TRANSFER OF PATENT – LICENSE V. SALE, STATUTORY CONSTRUCTION

Syllabus:

(1) Section 18192 of the Personal Income Tax Law applies to payments received on and after January 1, 1955, even if the transfer of the patent rights occurred prior to that date.

(2) If a transfer does not meet the requirements of Section 18192 to 18195, inclusive, of the Personal Income Tax Law, those sections are to be disregarded in determining whether the transfer is a sale or exchange of a capital asset.

A, who had patented an invention, conveyed to his wife and daughter each a one-third interest, in the patents in 1943. The three of them subsequently transferred all substantial rights in the patents to X.

(1) In 1955 the California Legislature added Sections 18192 to 18195, inclusive, to the Personal Income Tax Law, intending these sections to conform to Section 1235 of the Internal Revenue Code of 1954. Section 18194 omits the phrase "regardless of the taxable year in which such transfer occurred," which phrase appears in Section 1235(c) of the Internal Revenue Code of 1954. Otherwise the state and federal provisions are substantially the same except for the difference in effective dates. Omission of that phrase from Section 1235(c) would not change the meaning of that section. Therefore, Section 18194 should be interpreted in the same manner as Section 1235.

(2) A is a "holder" pursuant to Section 18193(a) and qualified for capital gain treatment. Neither his wife nor his daughter are "holders" since they acquired their respective interests by gift and are "related persons" within the meaning of Section 18195 they do not qualify for capital gain treatment under Section 18192. But Federal Regulation 1.1235 provides that if a transfer does not meet the requirements of Section 1235, that section shall be disregarded in determining whether the transfer is a sale or exchange of a capital asset. By disregarding Sections 18192 to 18195, inclusive, the interests of the wife and the child qualify as capital assets. Therefore, they are entitled to capital gains treatment.