

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 240

October 28, 1959

TAX CREDIT: NEW YORK AND DISTRICT OF COLUMBIA UNINCORPORATED BUSINESS TAXES

Syllabus:

(1) A tax credit is allowable for the New York State Unincorporated Business Tax under the provisions of Section 18001 of the Personal Income Tax Law.

(2) A tax credit is not allowable for the District of Columbia Unincorporated Business Franchise Tax under the provisions of Section 18001, Personal Income Tax Law.

(1) New York State -- Unincorporated Business Tax

The New York Unincorporated Business Tax Law imposes a tax on the net income of any unincorporated business wholly or partly carried on within New York State by either resident or nonresident individuals, partnerships, associations or other entities.

The Income Tax Bureau of the State of New York held in 1935 that said tax on net incomes of unincorporated businesses is an income tax. That ruling was sustained in 1940 by People ex rel Froelich v. Graves, 259 App. Div. 30, 18 N.Y.S. 2d 418.

In view of the foregoing, it is held that the New York State Unincorporated Business Tax is a net income tax within the meaning of that term as used in the tax credit provisions of the Personal Income Tax Law.

(2) District of Columbia Unincorporated Business Franchise Tax

The District of Columbia Unincorporated Business Franchise Tax is imposed on the privilege of carrying on and engaging in a trade or business in the District of Columbia and of receiving income from sources within said District.

The Court of Appeals of Maryland in April of 1957 had before it for determination the sole question as to whether or not the District of Columbia Unincorporated Business Franchise Tax was a net income tax within the meaning of tax credit provisions of that state. Gardella et ux v. Controller, 213 Md. 1.

The court determined that although the tax is imposed upon taxable income of the unincorporated business it is still not an income tax.

In Keasbey & Mattison Co. v. Rothensies, 134 F. 2d 894, it was held that a franchise tax, although measured by net income of a particular business, is not an income tax for purposes of a tax credit.

In view of the foregoing, it is held that the District of Columbia Unincorporated Business Franchise Tax is not a net income tax within the meaning of that term as used in the tax credit provisions of the Personal Income Tax Law.