

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 339

February 18, 1970

COMPUTATION OF SECTION 26082 CREDIT FOR FINANCIAL INSTITUTIONS

Syllabus:

Consideration of the effect of the credit allowed by Section 26082 upon the financial corporation offset, minimum tax and minimum tax rate specified in Section 23184.

Advice has been requested as to whether the Section 26082 credit is deducted before or after the financial corporation offset allowed by Section 23184 and whether the credit may properly reduce the tax below the 7 percent rate or the \$100 (\$25 in the case of credit unions with gross income of \$20,000 or less) minimum tax specified in the same section. With respect to the computation of the credit limitation set forth in Section 26082(c)(1) (25 percent of the tax computed, without regard to the credit) it has been asked if the "tax computed" is the tax payable before or after deduction of the financial corporation offset.

Section 26082 provides for the application of the credit against the "tax payable." It is held that the "tax payable" is the liability remaining after deduction of the offset.

Section 23184 requires that the tax on financial corporations after the allowance of the offset shall not be less than 7 percent of net income. Since Section 23184 was not amended upon the enactment of Section 26082 to protect the 7 percent rate against reduction by the credit, it is concluded that the credit may lower the tax below 7 percent of net income.

The same reasoning may be applied to the question of whether the credit can require the \$100 minimum tax (\$25 in the case of credit unions whose gross income is \$29,000 or less) specified in Section 23184. However, Section 26082(c)(1) limits the allowable credit to 25 percent of the "tax computed." Since the \$100 or the \$25 minimum tax is a flat charge assessed for the privilege of exercising the corporate franchise they are not a "tax computed" and, therefore the limitation upon allowance of the credit prevents reduction of the \$100 or the \$25 minimum tax.

The "tax computed" for the purposes of Section 26082(c)(1) is the tax after deduction of the financial corporation offset. If the limitation were computed before allowance of the offset financial corporations would be allowed a larger credit than national banks and, hence, a lower tax. Such a result is not permitted under federal law (12 U.S.C. § 548).