

02.28.17

FTB NOTICE 2017-01

SUBJECT: Court of Appeal Decision in *Swart Enterprises, Inc. v. Franchise Tax Board*

Purpose

This Notice is issued for the purpose of informing taxpayers and their representatives of a recent decision by the Court of Appeal of the State of California, Fifth Appellate District, in *Swart Enterprises, Inc. v. Franchise Tax Board*.

Background

On January 12, 2017, the Court of Appeal issued a published decision in *Swart Enterprises, Inc. v. Franchise Tax Board* (Cal. App. 5th Dist. 2017) 7 Cal. App. 5th 497 (“*Swart*”). In this case, the court held that Swart Enterprises, Inc., an Iowa corporation (the “Iowa Corporation”), was not doing business in California and therefore was not subject to the \$800 minimum franchise tax that the Franchise Tax Board had assessed.

In *Swart*, the Iowa Corporation held a 0.2 percent membership interest in a manager-managed California LLC that was doing business in California. The Iowa Corporation acquired its 0.2 percent membership interest in the California LLC after the original members made the decision for the California LLC to be manager-managed. The original members delegated to a sole manager full, exclusive and complete authority to manage and control the California LLC. The Iowa Corporation’s sole connection to California was its above ownership interest in the California LLC.

Conclusion

The Franchise Tax Board will not appeal the *Swart* decision. The Franchise Tax Board will follow the Court of Appeal decision in *Swart* in situations with the same facts. To the extent taxpayers believe their situation has the same facts as in *Swart*, they should take that into consideration in determining if they have a return filing obligation and/or file a claim for refund, as appropriate. In any claim for refund, taxpayers should cite the holding in *Swart* and explain how their factual situation is the same as the facts in *Swart*.

The principal author of this Notice is Adam Susz of the Franchise Tax Board, Legal Division. For further information regarding this Notice, contact Mr. Susz at the Franchise Tax Board, Legal Division, P.O. Box 1720, Rancho Cordova, CA 95741-1720.