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LEGAL RULING – 2019-03

SUBJECT: California Tax Return Filing Requirements and Minimum Tax Obligations of an Out-Of-State Professional Athletic Team (California Revenue and Taxation Code ("CRTC") Section 25141)

ISSUE

Whether an out-of-state professional athletic team ("out-of-state team") has a California tax return filing requirement and is subject to minimum tax imposed under CRTC sections 23151 and 23151.1, where the out-of-state team does not share in the gate revenue generated from games played in California?

SITUATION ONE

Taxpayer is a "professional athletic team" as defined in CRTC section 25141(a)(3)¹. Taxpayer is a calendar year taxpayer. Taxpayer's home territory is located outside of California. The league in which Taxpayer plays has a season that begins in October of Year 1 and ends in May of Year 2. The league in which Taxpayer participates provides that a team hosting a league game is entitled to 100 percent of the gate receipts for that game and visiting teams do not share any of the gate receipts.

¹ CRTC section 25141(a)(3) defines a "professional athletic team" as "any entity which has all of the following characteristics:

- (A) Employs concurrently during the taxable year five or more persons, who are compensated for being participating members of an athletic team engaging in public contests.
- (B) Is a member of a league composed of at least five entities which are engaged in the operation of an athletic team and which are located in this and other states or in other countries.
- (C) Has total minimum attendance in the aggregate for all contests wherever played during the taxable year of 40,000 persons.

In Season 1, between October and December of Year 1, Taxpayer visits California multiple times to play league games against California-based teams from the same league. Taxpayer does not come to California to play any league games in Year 2.

SITUATION TWO

Assume the same facts as Situation One except that in addition to Taxpayer's visits to California in Year 1, the league schedule also requires Taxpayer to play one league game in California during Year 2 of Season 1.

SITUATION THREE

Assume the same facts as Situation One except the league's "regular" season lasts from September through December of the same year. If a team has a sufficient regular season win-loss record to enter the playoffs, the team will play one or more "post-season" games in January of the following year.

In Season 1, Taxpayer enters California to play a game in Year 1. Taxpayer does not have any post-season games in Season 1 and thus plays no games in January of Year 2. In Season 2 and 3, Taxpayer has no games in California. In the regular season of Season 4 (September through December of Year 4), Taxpayer does not enter California to play any games. However, Taxpayer has a successful regular season and visits California for a Season 4 post-season game in January of Year 5. Taxpayer does not play any other games in California in Year 5.

SITUATION FOUR

Assume the same facts as Situation One. During a taxable year, Taxpayer plays no "regular season" games in California. However, pursuant to the league schedule, Taxpayer does play a pre-season "exhibition game"² in California against a team based in California.

LAW & ANALYSIS

In California, taxpayers are subject to tax return filing requirements if they are doing business in this state. Specifically, CRTC section 23101, subdivision (a), defines "doing business" as "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit." CRTC section 23153, subdivisions (a) and (b), provide that every corporation doing business within California shall be subject to the minimum franchise tax, which is currently \$800, and CRTC section 18601, subdivision (a), provides that such corporations have an obligation to file a California Corporation Franchise or Income Tax Return. For purposes of the minimum tax obligation, CRTC

² An "exhibition game" is a game in which the win or loss does not contribute to a team's inclusion or exclusion in the post-season.

section 25141(e) provides that any "entity which operates a professional athletic team shall be treated as a corporation."

CRTC section 25141 is the controlling authority governing California income and franchise taxation of professional athletic teams and generally provides for reciprocal apportionment rules for professional athletic teams based within California and those based outside of California. Specifically, with respect to out-of-state teams, CRTC section 25141(c)(1)(B), (c)(2)(B), and (c)(3)(B) assigns a three-factor apportionment formula in which all factors are deemed to be zero. However, if an out-of-state team's home state allocates or apportions business income of California teams playing in that state, subdivision (d)(2) provides that business income of the out-of-state team playing in California will be subject to the same allocation or apportionment method in California as the method imposed on the California teams in that state.

The Legislature enacted CRTC section 25141 in 1983 as a direct response to *Boston Hockey Professional Association, Inc. v. Franchise Tax Board*, (December 29, 1982, C317618 [nonpub.opn.]) ("*BHPA I*"). *BHPA I* is a non-precedential opinion, in which the Court of Appeal held that a National Hockey League team was not doing business in California because the non-revenue generating games it played in California were not unitary with its revenue generating home games and because the team in question did not otherwise receive direct pecuniary gain from their participation in California games. When enacting CRTC section 25141, the Legislature explicitly stated its intent to supersede *BHPA I*, and to not disturb the unitary concept, and to not limit the out-of-state teams' minimum tax obligations.³

Accordingly, an out-of-state team is required to file a California tax return and to pay an applicable minimum tax for each taxable year in which the out-of-state team plays any league games in California, even if the out-of-state team does not share in the gate revenue generated from such games.

HOLDING – SITUATION ONE

Taxpayer is doing business in California within the meaning of CRTC section 23101(a) in Year 1 because it has entered into California to play a league game in that year. Accordingly, Taxpayer is required to file a California Corporation Franchise or Income Tax Return and to pay a minimum tax for Year 1.

³ Stats. 1983, ch. 961, section 3. (Subsequent to the enactment of CRTC section 25141, in 1986, a Los Angeles trial court nonetheless extended the holding of *BHPA I* to California's minimum tax requirements in *Boston Hockey Professional Association, Inc. v. Franchise Tax Board*, (Super. Ct. L.A. County, 1986, No. C-557918,) ("*BHPA II*"). However, *BHPA II* only dealt with a taxable year prior to the operative date of CRTC section 25141.)

HOLDING – SITUATION TWO

Taxpayer is doing business in California within the meaning of CRTC section 23101(a) in both Year 1 and Year 2 because it has entered into California to play league games in each taxable year; it is immaterial that the visits are part of the same season of game play in Taxpayer's league. Accordingly Taxpayer is required to file a California Corporation Franchise or Income Tax Return and to pay a minimum tax for Year 1 and Year 2.

HOLDING – SITUATION THREE

Taxpayer is doing business in California within the meaning of CRTC section 23101(a) in Year 1 because it has entered into California to play a league game in that year. Taxpayer is not doing business within the meaning of CRTC section 23101(a) in California in Year 2, Year 3, or Year 4 because Taxpayer did not enter California to play league games in any of those years. Taxpayer is doing business in California within the meaning of CRTC section 23101(a) in Year 5 because, to play its post-season game, it has entered into California to play a league game in that year. Accordingly Taxpayer is required to file a California Corporation Franchise or Income Tax Return and to pay a minimum tax for Year 1 and Year 5.

HOLDING – SITUATION FOUR

Taxpayer is doing business in California within the meaning of CRTC section 23101(a) in the year because it has entered into California to play a league game in that year. It is immaterial that the game is not a regular season game. Accordingly Taxpayer is required to file a California Corporation Franchise or Income Tax Return and to pay a minimum tax for the taxable year.

DRAFTING INFORMATION

The principal author of this legal ruling is Kathy Shin of the Franchise Tax Board, Legal Division. For further information regarding this ruling, contact Ms. Shin at the Franchise Tax Board, Legal Division, P.O. Box 1720, Rancho Cordova, California 95741-1720.