

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 104

December 15, 1953

SOURCE OF INCOME: TAX CREDITS

Syllabus:

For tax credit purposes interest income derived from a note which has a California situs although secured by realty in another state has its source in California.

Taxpayer formerly a resident of Oregon but now a California resident has been held to be taxable in Oregon on interest income received from a note secured by real property in Oregon. The sale was made during a period of Oregon residency. There was no trade or business conducted in Oregon with which the sale was connected nor has the note been pledged as collateral in Oregon. The note is physically located in California. Oregon has based its tax on the theory that since the property is located there, and taxpayer's property rights therein are protected by Oregon laws, the note has a business situs in that state. Advice is requested whether for tax credit purposes, the interest income has its source in Oregon.

By the general rule, intangibles have a situs for taxation purposes at the domicile of their owner. An exception to this rule applies when the intangible has obtained a "business situs" apart from the domicile of the owner. Under what circumstances a "business situs" may be acquired is still rather vague under the law, however, it is generally recognized that the intangible must have been employed as capital within the taxing state (New Orleans v. Stempel, 175 U.S. 309) or have been localized in connection with a trade or business in the state in such a manner that it became an integral part of the trade or business, before it will have lost its situs at the domicile of the owner (Reg. 17211-17214(f), Metropolitan Life Ins. Co. v. New Orleans, 205 U.S. 395).

Since the note has not been pledged as collateral in Oregon, nor shown to have its source in a trade or business conducted by the taxpayer in Oregon, under our law the note has not acquired a business situs in Oregon. By the general rule it has its situs in California at the domicile of its owner, regardless of the fact that it is secured by realty in Oregon. State ex rel Manitowoc Gas Co. v. Wisconsin, 161 Wisc. 111, 152 N.W. 848. Therefore, taxpayer is not entitled to a tax credit paid for taxes paid on the interest income to the state of Oregon.