STATE OF CALIFORNIA
FRANCHISE TAX BOARD
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KATHLEEN CONNELL
Chair

CLAUDE PARRISH
Member

B. TIMOTHY GAGE
Member

October 15, 2001

Chief Counsel Ruling
01-201181

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Dear **********:

In your letter dated **********, you requested a ruling as to whether California Personal Income Tax, State Disability Insurance and other unspecified items were wrongfully withheld on certain monies paid to **********, a nonresident, by his former employer under a contract by which he agreed to dismiss a lawsuit alleging wrongful termination of employment. You subsequently modified your request to address only the question of whether amounts ******** received as a consequence of that dismissal are subject to California income tax.

We conclude that none of the amounts received are taxable by the State of California because they are not income from California sources.[1]

In your letter, you provided the following information. **********
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Nonresidents are subject to California income tax on income from California sources. Income from a termination of employment contract does not constitute compensation for services rendered, but income from an intangible. (*Appeal of McAneeley*, California State Board of Equalization, October 28, 1980.) Thus, the source of such income is not where the services were provided or would have been provided had the employment relationship not been terminated, but generally at the residence of the former employee

[1] Because we conclude that the amounts do not have a California source, we do not reach the question of whether or to what extent the amounts constitute income, generally.

at the time the income is recognized. (Revenue and Taxation Code § 17952.) There are two exceptions to this rule. If the intangible has acquired a business situs in California, the income has a source in this state. (*Ibid*.) Also, if the income accrued while the taxpayer was a resident of California, it may be taxable by California even though it is received when the taxpayer is a nonresident. (Revenue and Taxation Code § 17554, as limited by *Appeal of Money*, California State Board of Equalization, December 13, 1980.)

For sourcing purposes, we see no difference between income from a termination of employment contract and income from an agreement to dismiss a lawsuit alleging wrongful termination of employment. In either case, the income is properly characterized as income from an intangible, the right to continued employment. Here, ******** received amounts from an agreement to terminate a lawsuit alleging wrongful termination of employment. There are no facts alleged that suggest the agreement acquired a business situs in California or that the monies accrued before ******** became a nonresident. Accordingly, the amounts do not have a source in California and are not subject to California income tax.

Please be advised that the tax consequences expressed in this Chief Counsel Ruling are applicable only to the named taxpayer and are based upon and limited to the facts you have submitted. In the event of a change in relevant legislation, or judicial or administrative case law, a change in federal interpretation of federal law in cases where our opinion is based upon such an interpretation, or a change in the material facts or circumstances relating to your request upon which this opinion is based, this opinion may no longer be applicable. It is your responsibility to be aware of these changes, should they occur.

This letter is a legal ruling by the Franchise Tax Board's Chief Counsel within the meaning of Revenue and Taxation Code section 21012(a)(1). Please attach a copy of this letter and your request to the back of the appropriate return(s) (if any) when filed or in response to any notices or inquiries which might be issued.

Richard C. Gould
Tax Counsel III