



Appeal of Allan H. and Doris Rolfe

The sole issue for determination is whether appellants are entitled to apply a credit against their 1973 California personal income tax for net income taxes paid to the State of Iowa.

Appellants who are California residents owned stock in Nalpak Realty Company, an Iowa corporation with its principal place of business in Sioux City, Iowa. Nalpak was liquidated in 1973 and appellants received a liquidating dividend in the amount of \$138,780.31. Appellants reported the income to the State of Iowa for 1973 and paid tax thereon. They also included the income on their 1973 California tax return without claiming a credit for the Iowa taxes paid. Thereafter, they filed a claim for refund asserting that they were entitled to a credit for Iowa taxes paid on the dividend. Respondent denied the claim and this appeal followed.

Section 18001 of the Revenue and Taxation Code <sup>1/</sup> permits California residents who have paid income tax to another state on income derived from sources within that state to apply the tax paid against their California income tax liability under certain circumstances. The credit provision, however, does not apply if the income in question was derived from a California source.

This issue has previously been presented to the California Supreme Court in Miller v. McColgan, 17 Cal. 2d 432 [110 P.2d 4191 (1941)]. (See also Christman v. Franchise Tax Board, 64 Cal. App. 3d 751 [134 Cal. Rptr. 725] (1976).) The question before the court in

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<sup>1/</sup> Section 18001 of the Revenue and Taxation Code provides, in part:

Subject to the following conditions, residents shall be allowed a credit against the taxes imposed by this part for net income taxes imposed by and paid to another state on income taxable under this part:

(a) The credit shall be allowed only for taxes paid to the other state on income derived from sources within that state which is taxable under its laws irrespective of the residence or domicile of the recipient. (Emphasis added.)

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Miller was whether a credit was allowable for a Philippine income tax paid on dividends and gains received by a California resident-from his stock in a corporation located in the Philippine Islands. In applying the predecessor of section 18001, the court determined that no credit was available. The reasoning of the court was that the dividends and gains had their source in the stock itself, and that the situs of the stock was the residence of its owner. In reaching this conclusion the court applied the common law doctrine often followed in determining the taxable situs of intangible assets, mobilia sequuntur personam, meaning "movables follow the person." We have consistently followed the view set forth in Miller v. McColgan. (See, e.g., Appeal of John K. and Patricia J. Withers, Cal. St. Bd. of Equal., Sept. 1, 1966; Appeal of Hugh S. and Nina J. Livie, Cal. St. Bd. of Equal., Oct. 28, 3.964.)

Appellants **have** argued that the credit should be allowed since it is not the intent of either Iowa or California that they pay tax in both states. This board and the California courts have considered variations of this argument in situations where taxes have been imposed on the same income by both California and another state on different legal theories. (See Miller v. McColgan, supra; Christman v. Franchise Tax Board, supra; Appeal of John K. and Patricia J. Withers, supra.) In **each case** this argument has been rejected on the basis that no credits were properly allowable under the provisions of California law.

We see no material difference between the facts in this appeal and those in Miller v. McColgan, supra, and its progeny. We **therefore follow** ~~the~~ Miller rule in concluding that the liquidating dividends received by appellants upon liquidation of their Iowa corporation were derived from their stockholdings in that corporation. Under the principle of mobilia sequuntur personam, the **situs** of that stock was California, the residence of appellants. Since the liquidating dividends were derived from a California source rather than an Iowa source, within the meaning of our tax credit statute, respondent properly denied the claimed tax credit.

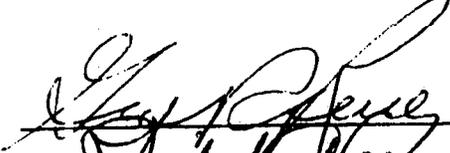
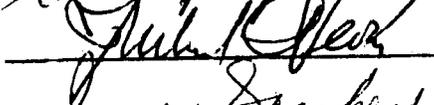
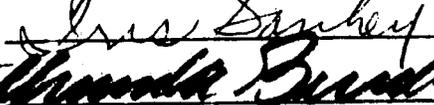
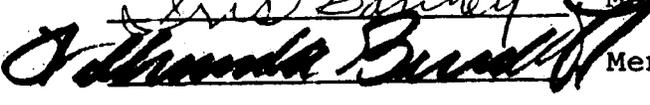
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O R D E R

Pursuant to ~~the~~ views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section **19060** of the Revenue and Taxation code, that the action of the Franchise Tax Board in denying the claim of **Allan H. and Doris Rolfe** for refund of personal income tax in the amount of **\$2,219.53** for the year 1973, be and the same is hereby sustained.

Done at Sacramento, California, this 11th day of January, 1978, by the State Board of Equalization.

  
\_\_\_\_\_, Chairman  
  
\_\_\_\_\_, Member  
  
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