



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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October 16, 1984

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No. 84/102

TO COUNTY ASSESSORS:

FINANCIAL CORPORATIONS

We have received inquiries from various county assessors' offices as to what criteria the Franchise Tax Board (FTB) relies upon to determine when a corporation would be classified as a financial corporation. Here are the criteria the FTB uses to make such determinations.

The term "financial corporation" is not defined in the Revenue and Taxation Code nor in the regulations thereto. For a definition for the purpose of the financial classification one must look to the California Courts which have held that a financial corporation is one which deals in moneyed capital, as opposed to other commodities, in substantial competition with national banks.

The State Board of Equalization in the appeals of Delta Investment Co. Inc., and Delta Research Corporation (California State Board of Equalization, April 6, 1978) lists the following factors in ascertaining whether a corporation is dealing in moneyed capital in substantial competition with national banks:

- (1) whether the corporation employs its moneyed capital in financial activities generally engaged in by national banks;
- (2) whether the combined capital and surplus of the corporation is of an amount comparable to national banks;
- (3) whether the moneyed capital employed in financial activities by the corporation represents a significant portion of its combined capital and surplus;
- (4) whether the loans are significant in number and amount when the corporation is engaged in lending activity; and
- (5) whether the corporation is earning substantial income from its financial activities.

Here is a useful list of questions and answers, provided to us by the FTB, which are intended to give insight into the practical application of the foregoing criteria.

QUESTION 1: How does one determine if the principal business activity of a corporation is leasing as opposed to financial as set forth in Section 23183(b) of the Revenue and Taxation Code?

ANSWER: A financial corporation deals in moneyed capital, as opposed to other commodities, in substantial competition with national banks. (See appeals of Delta Investment Co. Inc., and Delta Investment Research Corporation California State Board of Equalization, April 6, 1978, for the Board's definition of a financial corporation.) If more than 50 percent of the corporation's income is from "financial activities", as defined by the Board and the courts, a financial classification may reasonably be presumed. Where less than 50 percent of the corporation's income is from "financial activities", a financial classification will depend on the facts in the case.

QUESTION 2: Is principal business activity defined by California or total corporation activity?

ANSWER: Business as it is done by the total corporation everywhere is the basis for determining principal business activity.

QUESTION 3: Is the classification of income between leasing and financial defined by the corporation's books or Federal Form 1120 for defining principal business activity?

ANSWER: The classification of income on Form 1120, if reviewed and accepted by the Internal Revenue Service, would define income for purposes of the definition of principal business activity providing the tests set forth for Question 1 are met.

QUESTION 4: Is principal business activity for corporations filing a unitary return in California decided on a joint basis or on an individual corporation basis?

ANSWER: Each corporation stands on its own.

QUESTION 5: Can a corporation remain in a financial unitary return if it is judged to be nonfinancial?

ANSWER: Yes

QUESTION 6: How is the return filed to reflect the different tax rates for financial and nonfinancial corporations?

ANSWER: After a normal interstate calculation is made on the basis of the predominate activity, an intrastate calculation is used and the appropriate rates applied to the results of this calculation.

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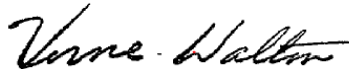
QUESTION 7: What California franchise return year would define a corporation as a financial institute for purposes of, say, the 1981 property tax lien date?

ANSWER: Under Assembly Bill 66 (Statutes of 1979, Chapter 1150), starting with income years beginning in 1981, while financial corporations remain subject to the taxes specified in Section 23182, they will not be subject to local personal property taxes and business license fees. "Income year" refers to the income year of the taxpayer, not that of the local entity.

Lien dates are relevant only to personal property taxes, not to business license fees, etc. Thus, a calendar 1981 taxpayer will not have to pay personal property taxes for 1981-82 based upon a March 1 lien date. However, a fiscal 1980 taxpayer with a year ending November 30, 1981, for example, will be subject to taxes for 1981-82 based upon the March 1 date. These taxes would be offset for the 1980 income year.

Obviously, the foregoing guidelines are matters with which an assessor's office does not normally deal. For that reason, we have attempted to rely on FTB determinations rather than burden assessors' offices with an additional, complex set of rules to administer. We continue to believe that it is best to follow FTB determinations whenever possible. However, when a matter needs to be resolved and FTB cannot provide a determination, there may be no other answer except for the assessor to make a determination according to the foregoing criteria.

Sincerely,



Verne Walton, Chief
Assessment Standards Division

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