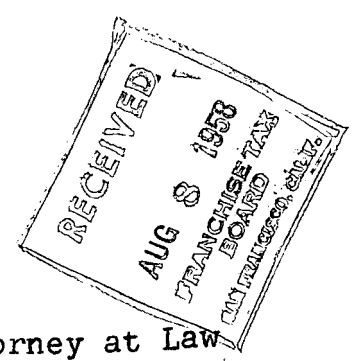


BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ANNE BACHRACH)



Appearances:

For Appellant: **Finley J. Gibbs, Attorney at Law**
For Respondent: Burl D. Lack, Chief Counsel;
John S. Warren, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Anne **Bachrach** for refund of personal income tax in the amounts of **\$65.53, \$35.44** and **\$33.94** for the years 1952, **1953** and **1954**, respectively.

Appellant, a resident of California during the years involved in this appeal, owned stock in certain Philippine corporations. On her California return for each of the years in question she claimed a credit for income tax paid to the Philippines on the dividends from the stock. The Franchise Tax Board in each instance has disallowed the credit on the ground that the dividends did not have their source in California.

Section 17976 of the Revenue and Taxation Code (now Section 18001) provided for a credit "for taxes paid to **[another]** ... country on income derived from sources within **that ... country.., ."**

In Miller v. McColgan, 17 Cal. 2d 432, the Supreme Court of California, on a substantially identical issue, held that the source of the dividends was in California where the stockholder resided, rather than in the Philippines and that a credit was not allowable. Subsequently, in Henley v. Franchise Tax Board, 122 Cal. App. 2d 1, a District Court of Appeal of this State considered the same question and held that a credit was allowable. The District Court based its decision on its belief that the Miller decision was no longer the law in view of State Tax Commission of Utah v. Aldrich, 316 U.S. 174, decided thereafter.

The problem thus created has been fully considered and discussed in our opinion in Appeals of R. H. Scanlon and Mary M. Scanlon, decided on April 20, 1955 (see also Appeals of

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John and Catharine Burnham, decided November 1, 1955), in which we concluded that the Miller decision is still controlling as respects the **question in issue**. As we also noted therein, the Attorney General of this State has taken a similar position and has advised the Franchise Tax Board that the decision of the Supreme Court of California should be followed.

Appellant argues, however, that this matter is distinguishable from the Miller case because since that decision neither stock in a Philippine corporation nor the dividends therefrom can be transferred or sent out of the Philippines without a license' from the Central Bank of the Philippines. Appellant contends that the stock has thus acquired a business **situs** in the Philippines.

The business **situs** exception to the doctrine that the income from intangibles has its source at the owner's domicile was recognized in the Miller case but the court found that it had no application to the facts there involved.

The business **situs** rule applies where intangibles are used by their owner in connection with a business away from the owner's domicile (Westinghouse Electric & Mfg. Co. v. Los Angeles County, 188 Cal. 491; Stanford v. San Francisco, 131 Cal. 34; Hinckley v. San Diego Court, 49 Cal. App. 668; Newark Fire Insurance Co. v. State Board of Tax Appeals, 307 U.S. 313; Title 18, Calif. Admin. Code, Reg. 17211-17214(f) (3); 51 Am. Jur. 480). There is nothing here to show that the stock was used in connection with a business in the Philippines. It appears to have been held merely as an investment.

The fact that the Philippines chose to assert jurisdiction over the stock and the dividends to the extent of restricting their transfer may affect the period in which the dividends are **includible** in income (see Rev. Rul. 57-379, **I.R.B. 1957-34**), but that point is not in issue here. Appellant has cited no authority and we have discovered none for the proposition that such restrictions determine the source of dividends for the purpose of allowing a tax credit. We do not believe that the assertion of jurisdiction by the Philippines in order to impose restrictions is any more determinative of the source of the dividends within the meaning of our act than was its assertion of jurisdiction to tax the dividends in question in Miller v. McColgan, supra. The fact that the Philippines considered the **situs** of the intangibles giving rise to the dividends to be in that country was held not material under our taxing statute.

Appellant points to Section 946 of the California Civil Code, enacted long prior to the Miller decision, which pro-

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vides that:

"If there is no law to the contrary, in the place where personal property is situated, it is deemed to follow the person of its owner, and is governed by the law of his **domicile.**"

She then states that since 1950, after the Miller decision, Article 16 of the Philippine Civil Code has provided that:

"Real property as well as personal property is subject to the law of the country where it is situated ..."

The Appellant assumes that the stock is situated in the Philippines and concludes that since the law of the Philippines is contrary to the rule that personal property follows the domicile of its owner its law is controlling. In our opinion, this argument is foreclosed by the Miller case as demonstrated by the following quotation from **that decision**:

"By virtue of express statutory provisions the Philippines do not apply the maxim of mobilia sequuntur personam so as to avoid their **taxation** of nonresidents on dividends received by them from Philippine corporations or on the income from sales of property having a **situs** in other jurisdictions. That the Philippines may impose such a tax does not mean that under our theories and our act such income is derived from the Philippines. Rather it simply indicates that the Philippines have adopted a theory and philosophy of taxation different from that adopted by California, which has uniformly applied the well-recognized principle of mobilia sequuntur personam in determining the **situs of intangibles** for purposes of taxation."

Q 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,

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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 claims of Anne Bschrach for refund of personal income tax in the amounts of **\$65.53, \$35.44** and **\$33.94** for the years 1952, 1953 and 1954, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 22nd day of July, 1958, by the State Board of Equalization.

Geo. R. Reilly _____, Chairman

J. H. Quinn _____, Member

Robert E. McDavid _____, Member

Paul R. Leake _____, Member

_____, Member

ATTEST: Dixwell L. Pierce _____, Secretary