

PARTNER  
SOURCE



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
H. F. AHMANSON & COMPANY )

Appearances:

For Appellant: Walter S. Weiss  
Attorney at Law

For Respondent: Burl D. Lack  
Chief Counsel

O P I N I O N

This appeal is made pursuant to section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of H. F. Ahmanson & Company against proposed assessments of additional franchise tax in the amounts of \$4,605.58, \$11,959.17 and \$11,228.11 for the income years 1956, 1957 and 1958, respectively.

The question presented is whether losses incurred as a corporate limited partner in two limited partnerships engaged in oil exploration in Turkey are deductible as losses derived from sources within this state. An additional question, involving losses incurred as a member of a joint venture engaged in oil exploration in Turkey, has been eliminated by appellant's concession that those losses are not deductible.

Appellant is a California corporation. Its principal business activity is that of a general insurance agent in this state. Appellant is also a partner in the aforementioned partnerships. Only a relatively small proportion of appellant's capital is contributed to the partnerships. The activities of appellant in the partnerships are entirely unrelated to appellant's principal business activity.

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The partnership agreements **were** entered into in California, all partners were domiciled here and management offices were maintained here. The principal activities of **the** partnerships, however, consisted of exploring **for** oil **in** Turkey. These operations resulted in losses. Appellant deducted its distributive share of the losses in determining its income for franchise tax purposes and this was disallowed by respondent.

Respondent contends that appellant's losses were **derived** from property located in Turkey and from activities carried on in that country and are nondeductible because attributable to sources without this state. Appellant's **primary** contention is that the losses were attributable to intangible partnership interests having a **situs** in this state and were therefore derived from sources in this **state**.

The net **income** by which the franchise tax is measured is restricted to net income from California sources. (Rev. & Tax. Code, § 25101.) **Income** from California sources includes income from **tangible** or intangible property located or having a **situs** in this state, and any income from **activities** carried on here. (Rev. & Tax. Code, § 23040.) Conversely, any losses from California sources are deductible. We must determine, therefore, the source of the partnership **losses**.

In Belden v. McColgan, 72 Cal. App. 2d 734 [165 P.2d 702], it was held that net income taxes **paid** to New York by a California resident upon income from a partnership business in New York were entitled to be credited against California personal income tax liability. The then pertinent statutory provision (section 25(a) of the Personal Income Tax Act of California) allowed a credit for net income taxes paid to another state on income derived from sources within that state. In Cracker-Anglo Nat. Bank v. Franchise Tax Board, 179 Cal. App. 2d 591 [3 Cal. Rptr. 905], the court analyzed the Belden case and Miller v. McColgan, 17 Cal. 2d 432 [110 P.2d 419]. The court explained that under the rule of the Miller case,

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income in stock dividend form received by a California resident from a corporation operating out of state is income attributable to this state because the stock, an intangible having its **situs** at the owner's residence, is the immediate source of the income. The court noted, however, that, unlike the stockholder, a partner is an owner of the **partnership** property and that the difference in the nature of a stockholder's interest in a corporation and a partner's interest in a partnership gives rise to a difference in source of income.

The concept that the source of even a limited partner's income is where the property of the partnership is located and where the partnership activity is carried on is supported by the reasoning in the federal income tax case of Donroy, Ltd. v. United States, 301 F.2d 200. That case concerned the tax **liability** of Canadian corporations which were limited partners in California partnerships. The court concluded that general partners are agents of limited partners for the purpose of conducting the business and also that the partners, whether general or limited, have such an interest in the assets of the partnership that any office of the partnership **is**, in law, the office of each of the partners. The court noted that in California a partnership, unlike a corporation, is considered to be not a legal entity but an association of individuals. (Reed v. Industrial Accident Commission, 10 Cal. 2d 191 [73 P.2d 1212]; Stiigenbaur v. United States, 115 F.2d 283.)

Additional support for the **view** that a limited partner derives his income from the place where the partnership operates is found in two New York decisions, People ex rel. Badische Anilin' and Soda Fabrik v. Roberts, 11 App. Div. 310 [42 N.Y.S. 502], aff'd, 152 N.Y. 59 [46 N.E. 161], and Chapman v. Browne, 268 App. Div. 806 [48 N.Y.S. 2d 598]. In the first case, a German corporation which was a limited partner was held to be **doing business in New York** where the partnership conducted its activities. And the court in the Chapman case held specifically **that** a nonresident individual who was a limited partner derived taxable income from a business carried **on** in New York through the agency of the partnership.

Appellant has also argued that, within the meaning of section 25101 of **the** Revenue and Taxation Code, the losses **arose from** isolated or occasional transactions in 'a country' in which the taxpayer was not doing business and, **therefore**,

