

Appeal of Ronnie C. and Patricia S. Childs

The ultimate issue for determination is whether appellants may credit the net income tax paid to the State of Nebraska for 1976 against their California personal income tax liability for the same year.

Appellants, who are California residents, are shareholders in Weston Oil Company, a Nebraska corporation which does **business** only in that state. For the year in issue, the shareholders of Weston elected to be treated as a subchapter S corporation pursuant to the applicable provisions of the Internal Revenue Code. As a result of the election, the corporation was treated for tax purposes effectively as a partnership rather than a corporation. Nebraska provides similar state treatment of corporations opting for subchapter S.

On their 1976 personal income tax return, appellants reported **\$4,593.25** in dividends from Weston and claimed a \$123.70 credit for taxes paid to Nebraska on this income. In claiming the credit, appellants relied on section 18001 of the Revenue and Taxation Code,^{1/} which permits a California resident who has paid a net income tax to a sister state on income derived from sources within that state to credit the tax paid against his California personal income tax. The credit does not apply to income derived from a California source. Respondent disallowed the credit on the basis that the corporate distribution was derived, from intangible personal property, the corporate stock, which is presumed to have a **situs** at the owner's residence. Appellants protested the disallowance of the credit, but their protest was denied. This appeal followed.

^{1/} Revenue and Taxation Code section 18001 provides, in pertinent 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.

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It is well settled that dividend income from a foreign subchapter S corporation has its source in the state where the shareholder is resident. Where, as here, the shareholder is a California resident, no credit is available under section **18001** of the Revenue and Taxation Code for taxes paid to a sister state upon that income. (See, e.g., Christman v. Franchise Tax Board, 64 Cal. App. 3d 751 [**134 Cal. Rptr. 725**] (1976); Appeal of Estate of Donald Durham, Cal. St. Bd. of Equal., Nov. 12, 1974.)

In arguing that the credit is applicable, appellants have failed to distinguish the corporation and its earned income from the shareholders and their dividend income received by virtue of their ownership of the corporate stock. In this appeal, the source of appellants' income is the stock, not the business operations of the corporation which **concededly** are in Nebraska, since it is only through their stock ownership that appellants have any claim to the money they received. (Miller v. McColgan, 17 Cal. 2d **432** [**110 P.2d 419**] (1941); Christman v. Franchise Tax Board, supra.) According to the well recognized doctrine of mobilia sequuntur personam, literally, movables follow the person, the **situs** of corporate stock and, therefore, the source of corporate dividends is in the state where the owner of the stock **resides** unless the stock has acquired a business **situs** elsewhere. (Miller v. McColgan, supra; Appeal of John K. and Patricia J. Withers, Cal. St. Bd. of Equal., Sept. 1, **1966**.) Thus, where shareholders are California residents, the source of their dividend income is presumed to be in California, and the credit provision of section 18001 of the Revenue and Taxation Code is inapplicable, unless the stock has acquired a foreign business **situs**. In this appeal, the domicile of the owners is in California, and appellants have not suggested the existence of a business **situs** elsewhere. Therefore, the source of the dividend income from the stock is also in this state.

For the reasons set out above, we conclude that appellant's stock had a **situs** in California and that dividends received therefrom constitute income from a California source. Therefore, respondent properly disallowed the credit claimed for the taxes paid to Nebraska.

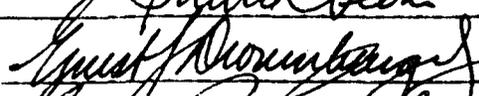
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O R D E R

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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Ronnie C. and Patricia S. Childs against a proposed assessment of additional personal **income tax** in the amount of \$123.69 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this **1st** day of August , 1980, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member
_____, Member
_____, Member