



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of **the Appeal** of)
MARVIN AND ALICE BAINBRIDGE)

Appearances:

For Appellants: Marvin Bainbridge
in pro. per.

For Respondent: James T. **Philbin**
Supervising Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Marvin and Alice Bainbridge against a proposed assessment of additional personal income tax in the amount of \$386.30 for the year 1977.

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The sole issue to be determined is whether appellants are entitled to a credit against California personal income tax for personal income tax **paid** to the State of Hawaii on certain interest income.

In 1975, while residents of Bangkok, Thailand, appellants Marvin and Alice Bainbridge executed an "agreement of sale" wherein they agreed to convey a certain parcel of land situated in the State of Hawaii. This agreement contained provisions for the payment of interest and penalties. They subsequently became residents of California.

Under the terms of the agreement, appellants received **\$11,075.00** in interest income in 1977. They reported this amount on their California return. Appellants paid Hawaii state income taxes on the interest received and claimed a tax credit **therefor** on their California return. Respondent denied the claim, resulting in this appeal.

Subject to certain conditions, section 18001 of the Revenue and Taxation Code allows a credit to California residents for net income taxes paid to other states on income also taxable in California. **One** of the several limitations on the availability of **the credit** is set forth in subdivision (a) of section **18001**, which provides in pertinent portion:

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)

The credit does not apply to income derived **from a California source**.

Respondent has taken the position that the income at issue is derived from a California source. Respondent's argument is that since the interest income flows from an agreement of sale and the debt **which** arose therefrom, it constitutes income from intangible property, which has its source at the appellants' residence. Respondent concludes, therefore, that appellants' California residency established a California source for the interest income and consequently, no credit was allowable for **income** taxes

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paid to Hawaii. For the reasons hereinafter stated, we **must** agree with respondent.

The issue presented by this appeal was addressed by the California Supreme Court decision of Miller v. McColgan, 17 Cal.2d 432 [110 P.2d 419] (1941). The question before the court in that case 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. The court determined that no credit was available under the predecessor of section 18001. The reasoning **behind the** decision was that the dividends and gains had their source in the stock itself, and that the **situs** of that stock was the residence of its owner. In reaching that conclusion the court applied the common law doctrine often followed in determining the taxable **situs** of intangible assets, mobilia sequuntur personam, i.e., "movables follow the **person.**" We have consistently followed the views set forth in Miller v. McColgan, (See, e.g., Appeal of Maude Peterson, Cal. St. Bd. of Equal., Dec. 5, 1978; Appeal of Stanley K. and Beatrice L. Wong, Cal. St. Bd. of Equal., -May 4, 1978; Appeal of John K. and Patricia J. Withers, Cal. St. Bd. of Equal., Sept. 1, 1966; Appeals of Hugh S. and Nina J. Livie, et. al., Cal. St. Bd. of Equal., Oct. 28, 1964; Appeal of Hallie L. Bills, Cal. St. Bd. of Equal., April 5, 1965.)

Appellants' argument is that when determining the source of interest income, a distinction exists between income arising from an "agreement of sale" and that arising from an "installment contract." They state that under Hawaii law, the former transaction causes interest derived thereunder to be traceable to the land itself. Appellants maintain that here, the transaction involved was in the form of such an "agreement of sale" and consequently, the income on which the tax was levied should be determined as having its source in the State of Hawaii.

In support of their position, appellants have relied upon a letter opinion by the Attorney General's Office of the State of Hawaii. We believe appellants have misconstrued that letter. Our conclusion is based on the statement contained in the final paragraph of that opinion which states that "the interest income is not derived from the sale of the land (for such a sale would yield no interest but merely the purchase price) **but** instead from a contractual agreement ...". This

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statement makes it clear that appellants' interest income was derived from an intangible asset, i.e. the contract and resulting debt rather than from the land.

Even assuming, arguendo, that Hawaii law is as appellants represent, California would not be bound by Hawaii's determination. In Christman v. Franchise Tax Board, 64 Cal.App.3d 751 [134 Cal.Rptr. 725] (1976), it was determined that in matters of this sort California law is controlling, even if a foreign state's characterization of the income of a California resident is contrary to the characterization of the same income under the laws of California. Under California law, contracts for the sale of land are not subject to the distinction claimed by appellants. Rather, all such contracts, generally, are treated as intangible property having its **situs** at the residence of the owner. As we stated in Appeal of Wong, supra, "the immediate source of interest income on a debt is the debt **itself....**" and "[s]ince the debt instrument is an intangible asset with its **situs** at the residence of the owner, the creditor, the interest has its source at the same place under the mobilia rule."

Based upon the foregoing, we conclude that the interest income received during 1977 by appellants was from a California source. Therefore, they had no entitlement to a credit against their California tax for taxes paid to Hawaii on such income.

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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 Marvin and Alice Bainbridge against a proposed assessment of additional personal income tax in the amount of \$386.30 for the year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 19th day of May , 1981, by the State Board of Equalization, with all Board members present.

Ernest J. Dronenburg, Jr. , Chairman

George R. Reilly , Member

William M. Bennett , Member

Richard Nevins , Member

Kenneth Cory , Member