

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
LORE PICK)

For Appellant: Nathaniel J. Stein
Certified Public Accountant

For Respondent: Eric J. Coffill
Counsel

O P I N I O N

This appeal is made pursuant to section 18593^{1/} of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Lore Pick against a proposed assessment of additional personal income tax in the amount of \$7,528 for the year 1980.

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the year in issue.

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The sole issue presented in this appeal is whether income received by a nonresident alien partner from a partnership doing business in California is subject to California income tax.

Appellant is a German citizen residing in Mexico. In 1980, she received income from her limited partnership interest in Talisman Fund, a California partnership located in Marina Del Rey, California. The sole business activity of the partnership is trading in commodities. The general partner of Talisman Fund is also located in Marina Del Rey and Talisman Fund's principal broker for trading in commodities and commodities futures contracts is located in Beverly Hills, California.

Respondent issued a notice of proposed assessment for the 1980 taxable year which assessed additional tax in the amount of **\$9,756.80**. This amount included appellant's share of ordinary loss and net capital gain from Talisman Fund. Appellant protested the proposed assessment on two grounds. First, appellant argued that the assessment was incorrect because appellant is a nonresident alien residing in Mexico and is not subject, under federal law, to United States income tax,^{2/} Secondly, appellant argued that the tax was not properly computed.

Respondent agreed that its calculations were incorrect and, before issuing its notice of action, corrected the amount of the ordinary loss to \$15,296 and the amount of the net capital gain to \$97,987. The assessment, consequently, was **reduced** from **\$9,756.80** to **\$7,528.00**. Appellant has appealed this assessment contending that nonresident aliens are not subject to California income tax.

For purposes of the California Personal Income Tax Law, in the case of a nonresident taxpayer, gross income includes only the gross income, from sources within

2/ The Internal Revenue Code provisions relied upon by **appellant** (section 864 and its companion sections in subchapter N) have no counterparts in California law and do not purport to relieve nonresident aliens of income taxation by a state. Thus, these provisions are not helpful to appellant's position. In addition, there do not seem to be any applicable treaties between Mexico and the United States which would prohibit imposition of the tax in question.

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the state. (Rev. & Tax. Code, § 17951.) It thus becomes necessary to determine if the income from the partnership has its source in California.

This board, in the Appeal of H. F. Ahmanson & Company, decided on April 5, 1965, addressed the issue of whether the income from a partnership had its source in California:

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]; Stilgenbaur 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.

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(See also Appeal of Custom Component Switches, Inc., Cal. St. Bd. of Equal., Feb. 3, 1977.)

In the present appeal, the property of Talisman Fund was located in California and the partnership activity was carried on in California. As we found in Ahmanson, the location of the property and the partnership's activity determines the source of a partner's income. Based on the evidence before us, we must conclude that the partnership's income is California-source income and is subject to California income tax.

