

California Superior Court Rules Corporate LLC Member Not Doing Business in California

by Jamey Parker

The California Superior Court has ruled in favor of the taxpayer in a case filed on July 9, 2013. (***Swart Enterprises, Inc. v. California Franchise Tax Board***, Fresno Superior Court, No. 13CECG02171, Order on Cross-Motions for Summary Judgment, November 14, 2014)

Swart owned a .02% interest in a LLC doing business in California. The primary issues of the case were:

- 1) Did Swart have sufficient nexus to be subject to the RTC 23153?
- 2) Do the provisions of RTC 23153 violate the Constitutions of the U.S. and/or the State of California?
- 3) Did Swart's investment activities during 2009 constitute doing business in California?

RTC 23153 is the California code provision that subjects any corporation doing business in California to the minimum tax.

The court found that because Swart's interest in the LLC was an investment interest and they did not have the ability nor the right to manage the affairs of the LLC, their interest was not comparable to a general partnership interest and did not give rise to doing business in California. Therefore, they are entitled to a refund of the \$800 minimum tax, interest, and penalties paid to the Franchise Tax Board (FTB).

The FTB is expected to appeal the case, but if you are a non-California corporation that has filed and paid tax to California based on your investment in a LLC doing business in California, we suggest you file a protective claim for refund now, before the statute of limitations expires.

In this particular case the plaintiff is a corporation. It is unclear as to whether the interpretation of the ruling will expand to include an investment interest by a LLC in a LLC doing business in California. To make sure that the opportunity for a refund is not lost, it is recommended that any non-California LLC in this situation should file a protective claim now.

Please contact TKW for additional information on filing a protective claim.

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