

Appeal of Rudd

Use of the Other State Tax Credit (OSTC)

5.6



STATE BOARD OF EQUALIZATION

Appeal Name: Michael J. Patricia Rudd

Case ID: 794298 ITEM #: B3

Date: 5/27/15 Exhibit No: _____

TP FTB DEPT PUBLIC COMMENT

Kentucky Law: LLET & LLET Credit

- Under Kentucky law a limited liability entity pays a gross entity tax – the LLET.
- A separate Kentucky law gives S Corporation shareholders a non-refundable personal income tax credit – the LLET credit.

California Law: OSTC

- Residents are allowed an income tax credit for **net income taxes imposed by and paid to another state** [18001(a)]
- A shareholder of a S Corporation is allowed to treat his, her, or its pro rata share of **net income** taxes paid to another state by the S Corporation **as if those taxes had been paid directly by the Shareholder** [18001(b)/18006]

Facts of the Appeal

Year	KY income tax paid	KY OSTC allowed	KY LLET credit	KY OSTC disallowed
2007	\$112,482	\$112,482	\$43,321	\$43,321
2008	\$209,590	\$209,590	\$25,077	\$25,077

Issue

Can Appellants claim the LLET credit as a tax imposed and paid for purposes of the OSTC.

Positions

Appellants: LLET credit is “a payment of tax”

Respondent: LLET credit is simply a credit

Problems with Appellants' Argument

- Credit is not a payment
- The “payment” isn’t a qualified payment
- The “payment” wasn’t made by Appellants

A Credit is not a Payment

- Unprecedented
- Against findings of the United States Tax Court
- Against findings of the IRS
- Against publications of Respondent

Functions of a Credit

- Credits are part of the calculation of tax
- Named as credits legally
- Non-refundable
- Cannot be used against other tax liabilities
- Credits are used in the order prescribed by law

LLET Credit Functions

- ✓ Credits are part of the calculation of tax
- ✓ Named as credits legally
- ✓ Non-refundable
- ✓ Cannot be used against other tax liabilities
- ✓ Credits are used in the order prescribed by law

Not Appellants' Payment

- Appellants did not make the payment, the S Corporation made the payment
- The law does not allow the ability to assign the payment to Appellants under 18001(a)

The Payment on Which the LLET Credit is Based is not Qualified for the OSTC

18001. (a) Subject to the following conditions, residents shall be allowed a credit against the "net tax" (as defined by Section 17039) for net income taxes imposed by and paid to another state (not including any preference, alternative, or minimum tax comparable to the tax imposed by Section 17062) on income taxable under this part

The LLET is neither a net tax nor an income tax

Summation

- **Appellants are using a credit and not a payment of tax to calculate the OSTC.**
- **The “payment” of tax was made by the S Corporation and not by Appellants.**
- **The “payment cannot be attributed to Appellants.**
- **The “payment” made was for a tax which is not eligible for the OSTC.**