



MULTISTATE INCOME/FRANCHISE TAX

California ruling on sourcing of IRC section 751 gain from the sale of a partnership interest

Tax Alert

Overview

On July 14, 2022, the California Franchise Tax Board (“FTB”) issued [Legal Ruling 2022-02](#) providing guidance on the sourcing of gain from the sale of a partnership interest by a nonresident individual where the underlying partnership has Internal Revenue Code (“IRC”) section 751 assets.

This Tax Alert summarizes some of the relevant provisions of Legal Ruling 2022-02.

Sale of partnership interest should be analyzed as two distinct transactions for purposes of sourcing the gain/loss to California

In Legal Ruling 2022-02, the FTB takes the position that the operation of [IRC section 751](#) requires the sale of a partnership interest to be treated as two distinct transactions:

- Proceeds from the sale of a partnership interest that are attributable to IRC section 751 assets are apportioned to California using the partnership’s California apportionment factor.
 - FTB’s interpretation of IRC section 751 creates a deemed sale of the IRC section 751 assets by the partnership followed by a deemed distribution to the selling partner.
 - FTB states that IRC section 751 gain is treated as distributive share under [IRC section 702\(b\)](#).
 - FTB concludes *“the proceeds attributable to the deemed sale of the IRC 751 property are treated as a pro rata distribution (or distributive share) to the partner of gain or loss items of the partnership. This distribution is, therefore, income from a trade, business or profession to be sourced pursuant to Regulation section [17951-4](#)”*.

- In other words, according to the FTB the IRC section 751 gain is apportioned to California based on the partnership's California apportionment factor.
- [IRC section 741](#) gain or loss, proceeds from the sale of the partnership interest not attributable to IRC section 751 assets, are treated as the sale of an intangible asset.

Get in touch

[Greg Bergmann](#)

[Farah Raja](#)

[Suzanne Henley](#)

[Robert Waldow](#)

[Chris Campbell](#)

[Shirley Wei](#)

[Olivia Schulte](#)



[Deloitte.com](#) | [Unsubscribe](#) | [Manage email preferences](#) | [Legal](#) | [Privacy](#)

30 Rockefeller Plaza
New York, NY 10112-0015
United States

This alert contains general information only and Deloitte is not, by means of this alert, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This alert is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this alert.

As used in this document, "Deloitte" means Deloitte Tax LLP, a subsidiary of Deloitte LLP. Please see www.deloitte.com/us/about for a detailed description of our legal structure. Certain services may not be available to attest clients under the rules and regulations of public accounting.

Copyright © 2022 Deloitte Development LLC. All rights reserved.