

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
FINLEY J. GIBBS, TRUSTEE)

Appearances:

For Appellant: Finley J. Gibbs, Attorney at Law,
in pro. per.
For Respondent: Burl D. Lack, Chief Counsel;
John S. Warren, Associate Tax Counsel

O P I N I O N

These appeals are made pursuant to Section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Finley J. Gibbs for refund of personal income tax in the amounts of \$17.38, \$23.75, \$18.11 and \$18.20 for the years 1951, 1952, 1953 and 1954, respectively, for each of the following trusts:

Allison De France Gibbs, Allison J. Gibbs, Trustor				
Candace Gibbs,	ff	ff	ff	ff
Douglas F. Gibbs,	ff	ff	ff	ff
Johnson K. Gibbs,	ff	ff	ff	ff
Reginald K. Gibbs,	ff	ff	ff	VP
Allison De France Gibbs, Esther K. Gibbs, Trustor				
Candace Gibbs,	ff	If	ff	ff
Douglas F. Gibbs,	ff	ff	ff	ff
Johnson K. Gibbs,	ff	ff	ff	ff
Reginald K. Gibbs,	ff	91	ff	ff

Appellant, a resident of California, is trustee for the above trusts, in each of which the principal asset is stock in a Philippine corporation. The trustors, residents of the Philippines, transferred the stock to Appellant by a "Deed of Sale and Declaration of Trust" which provided that the trustee should pay a stated amount in Philippine currency as consideration for the transfers. The trustors retained possession of the stock certificates as security for the unpaid balance.

Appellant claims a credit for each of the trusts against the California tax for income taxes paid to the Philippines on the dividends from the stock. The Franchise Tax Board contends that credits are not allowable because ~~the~~ dividends did not have their source in the Philippines.

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The issues in these appeals, except for one additional point referred to below, are the same as those presented in the Appeal of Anne Bachrach, decided this day. For the reasons stated in that opinion, those issues have been determined adversely to the contentions of Appellant.

The one additional issue arises because the stock in question was not fully paid for and the certificates were in the Philippines in possession of the trustors as security for the unpaid balance. Appellant contends that these facts compel a conclusion that the stock has **acquired a business situs** in the Philippines.

The business **situs** rule is an exception to the general rule that intangible property has its **situs** at the **owner's** domicile and applies only where the property is used by the owner in connection with business activities away from his domicile. There is no showing here that the stock was used in that connection in the Philippines. The mere fact that the stock certificates were held in the Philippines as security is not controlling. Where stock is pledged to and the certificates are held by a person in another state as security for a loan, the stock does not thereby acquire a business **situs** at the creditor's domicile in the absence of use of the stock in relation to a business there. Stanford v. San Francisco, 131 Cal. 34.

We conclude that the dividends had their "**source**" in California within the meaning of Section 17976 of the Revenue and Taxation Code (now Section 18001) and therefore that the action of the Franchise Tax Board must be upheld.

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Finley J. Gibbs **for refund** of personal income tax in the amounts of **\$17.38**, \$23.75, **\$18.11** and **\$18.20** for the years 1951, 1952, 1953 and 1954, respectively, for each of the following trusts:

Appeals of Finley J. Gibbs, Trustor

Allison De France Gibbs, Allison J. Gibbs, Trustor				
Candace Gibbs,	W	??	VI	??
Douglas F. Gibbs,	??	??	??	it
Johnson K. Gibbs,	??	??	??	??
Reginald K. Gibbs	??	TV	??	??
Allison De France Gibbs, Esther K. Gibbs, Trustor				
Candace Gibbs,	??	??	??	??
Douglas F. Gibbs,	it	??	??	tt
Johnson K. Gibbs,	it	it	??	??
Reginald K. Gibbs,	tt	??	??	tv

be and the same is hereby sustained.

Done at Sacramento, California, this 22nd day of July, 1958, by the State Board of Equalization.

George R. Reilly, Chairman

J. H. Quinn, Member

Robert E. McDavid, Member

Paul R. Leake, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary