



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
BLAKE AND ALICE HALE)

Appearances:

For Appellants: Calvin H. Conron, Jr., Attorney at Law
For Respondent: Burl D. Lack, Chief Counsel;
Crawford H. Thomas, Associate Tax
Counsel

O P I N I O N

This appeal is made pursuant to Section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Blake and Alice Hale against proposed assessments of additional personal income tax in the amount of \$376.92 each for the year 1951 and in the amounts of \$142.21, \$125.41, and \$231.61 jointly for the years 1952, 1953, and 1954, respectively.

Appellants are husband and wife and the parents of two minor children. They filed separate returns for 1951 and joint returns for the other years in question. On October 1, 1951, they created two trusts, one for each of the two children, which trusts were identical except for the child named beneficiary. Each declaration of trust identified Appellants as trustors, named three persons (including the Appellant Alice B. Hale) as trustee, and declared that the trustors had delivered the sum of \$100 to the trustee. Each declaration of trust provided that all property then or later subject to the trust should constitute the trust estate and be held, managed and distributed in accordance with its terms. The trustee was empowered to acquire every kind of property or investment and to operate any property or business received in the trust.

The trustors reserved the right of advice and consultation in respect to sales, investments, and business activities of the trust and further reserved the right to change the beneficiary to any person other than themselves if the child named beneficiary died before attaining the age of majority. Neither declaration of trust stated in so many words that the trust was irrevocable.

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The provisions for compensation of the trustee included the following:

"(3) On disbursement of principal funds as directed in the trust, 1% of the principal funds distributed, excluding income converted into principal, payable annually.

"On partial or total revocation, 1% of the reasonable value of the property withdrawn. On every other termination in whole or in part, 1% of the reasonable value of the property distributed; minimum upon total revocation or final termination, \$100.00."

Each declaration of trust stated that the trust had been accepted by the trustee in the State of California and that its validity, construction and all rights under it should be governed by the laws of California.

The trustees acquired interests in a farming partnership for the trusts. Each trust thus became entitled to 12-1/2 percent of the partnership's income. Later the partnership borrowed \$500,000, which, together with its other resources, enabled it to earn substantial profits during the years in question.

The Franchise Tax Board has determined that the income of the trusts is taxable to the Appellants, grounding its determination upon Section 18171 of the Revenue and Taxation Code which during the years in question, provided:

Where the title to any part of the corpus of the trust may at any time revert in the grantor without the consent of any person having a substantial adverse interest in such part of the corpus or the income therefrom, and the reversion is not contingent upon the death of all the beneficiaries, the income of such part of the trust shall be included in computing the net income of the grantor if the grantor is a resident
..."

It is the Franchise Tax Board's position that the Appellants retained the power to revoke the trusts. Thus the corpus of each trust could revert in Appellants at any

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time simply by their own acts of revocation. The Franchise Tax Board maintains that the trusts in question are revocable because Section 2280 of the Civil Code provides:

"Unless expressly made irrevocable by the instrument creating the trust, every voluntary trust shall be revocable by the **trustor** by writing filed with the trustee. When a voluntary trust is revoked by the **trustor**, the trustee shall transfer to the **trustor** its full title to the **trust** estate ..."

Appellants contend that the trust income is not taxable to them because the trusts were "expressly made irrevocable" if the trust instruments are construed as a whole.

Although Appellants at one point advance the view that the declarations of trust to which we have referred were not the instruments creating the trusts in question and that instead the deliveries of \$100 each to the trustees were the "instruments," this view is of no avail here in the absence of a showing that the "instruments" expressly made the trusts irrevocable as provided in Section 2280 of the Civil Code.

In construing the declarations of trust in question we are confronted with something more than a mere omission of a provision making the trusts irrevocable. By their terms, the trust instruments provided for the compensation of the trustees at a **stated percentage of the property "withdrawn"** upon a--"partial or total **revocation**" of the trusts. In the light of **Section 2280** of the Civil Code, it seems abundantly clear that in creating each trust Appellants contemplated, and **provided** for, the possibility of its subsequent **revocation**.

At the hearing of this appeal Appellants for the first time argued that the declarations of trust are operative only as to the original contributions of \$100. They contend, accordingly, that they are without power to revoke the trusts in respect to the partnership interests, from which the bulk of the trust income was derived.

No facts have been presented in support of this argument. The trust instruments in question in this appeal provide that additional property may be added to the trusts. We have **concluded** that the trusts created by these instruments are subject to revocation by Appellants. If the partnership interests are held under different trust instruments, the trusts created

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by such instruments have not been shown to be irrevocable. The action of the Franchise Tax Board, accordingly, must be sustained.

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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of Blake and Alice Hale against proposed assessments of additional personal **income** tax in the amount of \$376.92 each for the year 1951 and in the amounts of \$142.21, \$125.41 and \$231.61 jointly for the years 1952, 1953 and 1954, respectively, be and the same is hereby sustained,

Done at Los Angeles, California, this 19th day of October, 1960, by the State Board of Equalization.

John W. Lynch, Chairman

George R. Reilly, Member

Paul R. Leake, Member

Richard Nevins, Member

ATTEST: - Dixwell L. Pierce, Secretary