

Counsel

made pursuant to section 18594 of Code from the action of the Franchise of Emily E. Price against a proposed personal income tax in the amount of \$1,860.94 for the year 1960.

While residing in Hawaii in 1945, James Owen Price transferred 500 shares of stock in Union Carbide and Carbon Corporation, in trust, to the Bishop Trust Company, Ltd., a Hawaiian corporation, and to his wife, appellant Emily E. Price, as cotrustees. The trustees were to hold the stock and such other property as might become part of the trust estate, paying the net income therefrom in quarterly or monthly installments to appellant during her life,

The trust instrument granted the trustees extensive powers of trust management, including the right to sell, transfer, mortgage or otherwise deal in or dispose of the trust property and to invest and reinvest the trust assets, provided, however, that the Union Carbide shares were not to be sold unless deemed absolutely necessary by the trustees. The Bishop Trust Company was charged with the custody and

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safekeeping of the trust estate and received three-fourths of the compensation for trustees' **services**.

During the year in question, 1960, appellant was a California resident, She paid tax to Hawaii on the net income distributable to her by the Price trust and claimed credit therefor, pursuant to section 16001 of the Revenue and Taxation Code, on her California personal income tax return, T h e instant assessment arises from the Franchise Tax Board's disallowance of most of that credit,

Subject to certain conditions, section 18001 allows residents a credit against their California personal income taxes for net income taxes paid to another state. But this credit is allowed only for "taxes paid to the other state on income derived from sources within that state," (Rev. & Tax. Code, § 18001, subd. (a),) It is respondent's primary position that intangible personal property held in trust has its **situs**, and thus the income from the property has its source, at the place where the beneficiary of the trust resides, On this basis, respondent determined that the source of the bulk of appellant's trust income, the portion earned from intangible personal **property**, was at the place of her residence, California, and not in Hawaii,

In the Appeal of Estate of Douglas C. Alexander, etc., decided this day by us, we concluded that intangible personal property held in an active trust had a **situs** at the residence of the trustees and that, therefore, the income from the property had a source at that location, Our conclusion was based on the principle that the language of the tax credit provision is to be interpreted in light of the decided cases existing in 1935, when the language was first enacted,

Unlike the Alexander appeal, where both trustees were residents of Hawaii, one of the trustees of the Price trust, appellant, was a resident of California during the year in question. As an alternative position, therefore, respondent argues that one-half of the intangibles of the Price trust had a **situs** in California and not in Hawaii,

This argument is supported by Mackay v. San Francisco (1900) 128 Cal, 678 [61 P. 382], wherein the California Supreme Court considered a case involving the **application** of a property

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tax to railroad bonds held in trust, One of the two trustees, Mackay, was a resident of Nevada, while the other, Dey, resided in San Francisco, The bonds were deposited in the joint names of the trustees in a bank in New York City, where Mackay lived and transacted business during the greater part of the time. In determining whether the bonds were within California for the purposes of taxation, the court found an undivided one-half of the bonds had a situs here,,

The fact that Mackay dealt with the application of a property tax rather than income tax is not a material distinction, (Miller v. McCoigan, 17 Cal, 2d 432 [110 P.2d 419].) Neither is the fact that appellant received only one-fourth of the trustees' fees, there being no indication from the trust provisions that this was intended to derogate from her interest as trustee in an undivided one-half of the trust assets. We are in agreement, therefore, with respondent's alternative position and we find that appellant is entitled to a credit for the Hawaiian income tax paid on one-half of the trust's income derived from intangible personal property.

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 protest of Emily E. Price against a proposed assessment of additional personal income tax in the amount of \$1,860.94 for the year 1960, be

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and the same is hereby modified so as to allow appellant a credit for the Hawaiian income tax paid on one-half of the James Owen Price Trust income derived from intangible personal property. In all other respects, the action of the Franchise Tax Board is sustained,

Done at Sacramento, California, this 4th day of January, 1966, by the State Board of Equalization.

Geoff Kelly, Chairman
John W. Lusk, Member
Don R. Leake, Member
Richard Martin, Member
_____, Member

ATTEST : [Signature]

Secretary