

Appeal Name: Paula TrustCase ID: 759422ITEM #. B1Date: 8/30/16

Exhibit No:

8.4

Personal Income Tax

[FTB] DEPT PUBLIC COMMENT

Chap 1 – Definitions

=> Section 17004 "Taxpayer": "any individual, fiduciary, estate, or trust subject to the tax imposed by this part..."

Chap 2 – Imposition

=> Section 17041(e) "There shall be imposed for each taxable year upon the taxable income of every estate, trust, or common trust fund taxes equal to the amount computed under subdivision (a) for an individual having the same amount of taxable income."

=> Section 17041(i)(1)(B) The term "taxable income of a nonresident or part-year resident" includes income derived from sources within this state

Chap 11 – Nonresidents

=> Section 17951: In the case of nonresident taxpayers the gross income includes only the gross income from sources within this state.

PART 10
Personal Income Tax

Chap 9 – Estates, Trusts, Beneficiaries and Decedents

=> Section 17731 conforms with Subchapter J, Chapter 1, Subtitle A of the Internal Revenue Code, relating to estates, trust, beneficiaries and decedents, including

=> IRC section 641(b): **The taxable income of an estate or trust shall be computed in the same manner as in the case of an individual, except as otherwise provided in this part.**

=> Section 17742 Residency Rule for Trusts & Estates: The entire taxable income of a trust is taxable if the fiduciary or beneficiary (other than a beneficiary whose interest in such trust is contingent) is a resident

=> Section 17743 "Where the taxability of income **under this chapter** depends on the residence of the fiduciary and there are two or more fiduciaries for the trust, **the income taxable under Section 17742 shall be apportioned** according to the number of fiduciaries resident in this state pursuant to rules and regulations prescribed by the Franchise Tax Board."

Regulation 17743: clearly provides the rule that trusts will be taxed on all income derived from a California source, and then any remaining income will be apportioned according to the number of fiduciaries in this state.

amounted to \$40,000, i.e., \$50,000 net income from property located, and business carried on, in this State, less 1/2 or \$10,000 of the \$20,000 net loss from sources without this State.

(b) In lieu of the deductions authorized by Sec. 8(1) in the case of individuals, estates and trusts are allowed to deduct any part of the gross income of the estate or trust for its taxable year which, by the terms of the will or of the instrument creating the trust, is paid or permanently set aside during such year for the charitable, etc., uses or purposes referred to or described in Sec. 12(c). In the case of estates and trusts which, as indicated in (a) of Art. 12(b), are taxable upon their entire net income, the entire income so paid or set aside may be deducted; in the case of estates and trusts, which, as indicated in (b) of Art. 12(b) are taxable only upon net income from sources within this State, only amounts so paid or set aside out of income from sources within this State may be deducted; in the case of estates and trusts which, as indicated in (c) and (d) of Art. 12(b) are taxable upon all net income from sources within this State, and also upon a portion of the net income from other sources, amounts so paid or set aside out of income from sources within this State may be deducted in their entirety and amounts so paid or set aside out of income from other sources may be deducted in computing the portion of the net income from such other sources which is taxable to the estate or trust, but none of the amounts so paid or set aside out of income from such other sources may be deducted from income from sources within this State.

(c) In addition to the deductions mentioned in (a) and (b) of this article, estates and trusts are entitled to the following deductions:

(1) Any income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to a beneficiary, whether or not such income is actually distributed.

(2) Any income of the estate of a deceased person for its taxable year which is properly paid or credited during such year to a legatee or heir, and any income either of such an estate or of a trust for its taxable year which is similarly paid or credited during that year to a legatee, heir, or beneficiary if there was vested in the fiduciary a discretion either to distribute or to accumulate such income.

In the case of estates and trusts which, as indicated in (a) of Art. 12(b) are taxable upon their entire net income, the entire income paid or credited, or distributed or distributable to beneficiaries is deductible; in the case of estates and trusts which, as indicated in (b) of Art. 12(b) are taxable only upon net income from sources within this State, only income from sources within this State paid or credited, or distributed or distributable to beneficiaries is deductible; in the case of estates and trusts which, as indicated in (c) and (d) of Art. 12(b) are taxable upon net income from sources within this State and also upon a portion of the net income from other sources, income from sources within this State paid or credited, or distributed or distributable is deductible and income from other sources paid or credited, or distributed or distributable to beneficiaries may be

deducted in computing the portion of the net income from such other sources which is taxable to the estate or trust, but none of the income from such other sources so paid or credited, or distributed or distributable may be deducted from income from sources within this State.

Art. 12(c)-2. Taxable Income of Beneficiaries of Estates and Trusts. (a) Beneficiaries of an estate or trust, who are residents of this State, are taxable upon the entire income *received by them or accrued to them on or after January 1, 1935*, from the estate or trust if the income was *received by or accrued to the estate or trust before January 1, 1935*, regardless of whether such income was or was not taxed to the estate or trust by the United States. Such beneficiaries are also taxable upon the net income of the estate or trust received by or accrued to the estate or trust on or after January 1, 1935, and which is *deductible* by the estate or trust under the provisions of Sec. 12(c), regardless of whether or not actually distributed to the beneficiaries and regardless of whether or not actually claimed as a deduction by the estate or trust.

(b) Nonresident beneficiaries of an estate or trust are taxable upon the income of the estate or trust derived from sources within this State to the same extent as resident beneficiaries, but are not taxable upon any income derived by the estate or trust from other sources. For meaning of income from sources within this State, see Art. 7(f).

(c) Neither resident nor nonresident beneficiaries of an estate or trust are taxable upon any income of the estate or trust which is not actually distributed to the estate or trust under the act and upon which the tax has been paid by the fiduciary.

[SEC. 12. IMPOSITION OF TAX ON ESTATES AND TRUSTS]

(d) **Exemption allowed estates and trusts.**—For the purpose of the tax herein imposed, the estate or trust shall be allowed the same personal exemption as is allowed to a single person under section 10 (a).

(e) **Taxable year of beneficiary different from that of estate or trust.**—If the taxable year of a beneficiary is different from that of the estate or trust, the amount which he is required, under section (c) (2) of this section, to include in computing his net income shall be based upon the income of the estate or trust for any taxable year of the estate or trust ending within his taxable year.

(f) **Employee's trusts.**—A trust created by an employer as a part of a stock bonus, pension, or profit-sharing plan for the exclusive benefit of some or all of his employees, to which contributions are made by such employer, employee, or both, for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, shall not be taxable under this section, but the amount actually distributed or made available to any distributee shall be taxable to him in the taxable year in which so distributed or made available to the extent that it exceeds the amounts paid in by him.

(g) **Revocable trusts.**—Where at any time the power to revest in the grantor title to any part of the corpus of the trust is vested—

(1) In the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom, or

(2) In any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom,

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