

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
C. H. WILCOX }

Appearances:

For Appellant: R. Ernest Brotherton, Attorney At Law

For Respondent: Frank M. Keesling, Franchise Tax Counsel

O P I N I O N

This is an appeal pursuant to Section 20 of the Personal Income Tax Act of 1935 (Chap. 329, Stats. of 1935) from the action of the Franchise Tax Commissioner in denying Appellant's claim for a refund of tax alleged to have been overpaid by him for the taxable year 1936 in the amount of \$422.10.

The Appellant is a resident of California and beneficiary under certain testamentary trusts, and during the year 1936 received income as such beneficiary. The testators and trustees were all residents of the Territory of Hawaii, and the trust property consisted of intangible personal property, the physical evidences of which were also in the Territory of Hawaii, in the possession and control of the trustees. The Appellant reported this trust income in the return which he filed for the year 1936 under the Personal Income Tax Act, and paid income tax thereon pursuant to the provisions of Section 12(c) of the Act. Subsequently he was notified by the Tax Commissioner of the Territory of Hawaii that a tax was due to said territory on said income under the following provision of the Hawaiian income tax statute (Chap. 65, Revised Laws of Hawaii, 1935 Sec. 2033, Sub-section 1, as amended by Act 120, A-45, Session Laws of Hawaii, 1935):

"Gross income includes all gains, profits and income derived or received from any and every source in the Territory, 'whether or not connected with a trade or business, and also all gains, profits and income derived or received from all property owned and every trade or business carried on in the Territory and also all commissions, fees, wages, salaries, bonuses, and every and all other kinds of compensation paid for or attributable to personal services performed within the Territory, and also all dividends received having a situs for taxation within the Territory,"

Appellant's claim for refund is based on Section 25(a) of the Personal Income Tax Act of 1935, which reads in part as follows:

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"Whenever a resident taxpayer of this State has become liable to income tax to another state or country upon his net income, or any part thereof, for the taxable year, derived from sources without this State, and subject to taxation under this Act, the amount of income tax payable by him under this Act shall be credited with the amount of income tax so paid by him to such other state or country . . ."

The Commissioner's action in denying the claim for refund is based on the position that the income in question was not "derived from sources without this State", within the meaning of the above quoted provision, and the propriety of this position is the sole question presented by this appeal.

The testators and trustees were all residents of Hawaii, where the trust was managed and controlled and where the physical evidences of the intangibles constituting the trust res were located. Under these circumstances, despite the fact that the income was subject to taxation in this State, just as it would have been had it been derived from land in Hawaii, (Cohn v. Graves, 300 U. S. 308) the income had a source in the Territory of Hawaii. (Lowry v. Los Angeles County, 38 Cal. App. 158, 175 Pac. 702, Safe Deposit and Trust Co. v. Virginia; 238 U. S. 83.) Accordingly, we are of the opinion that under Section 25 Appellant is entitled to a credit on account of the tax paid the Territory of Hawaii with respect to such income.

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 that the action of Chas. J. McColgan, Franchise Tax Commissioner, in denying the claim of C. H. Wilcox for a refund of personal income tax in the amount of \$422.10 for the taxable year ended December 31, 1936, be and the same is hereby reversed. The Commissioner is hereby directed to give credit to C. H. Wilcox for said amount of \$422.10 paid by said C. H. Wilcox for said year or to refund said amount to said C. H. Wilcox and otherwise to proceed in conformity with this order.

Done at Sacramento, California, this 15th day of November, 1939, by the State Board of Equalization.

Fred E. Stewart, Member
George R. Reilly, Member
Harry B. Riley, Member

ATTEST: Dixwell L. Pierce, Secretary