



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
ESTATE OF WILLIAM A. SLATER }

Appearances:

For Appellant: Perkins, Malone and Washburn, Attorneys at Law.

For Respondent: W. M. Walsh, Assistant Franchise Tax Commissioner; James J. Arditto, Franchise Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 19 of the Personal Income Tax Act (Chapter 329, Statutes of 1935, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of the Estate of William A. Slater to a proposed assessment of additional tax in the amount of \$296.76 for the year ended December 31, 1937.

Appellant is a testamentary trust created under the will of William A. Slater who was a resident of the District of Columbia. All the assets of the trust estate were located outside California with the exception of two parcels of real estate which produced no income. During the year in question the trust was administered under the laws of the District of Columbia, one of the three trustees being a resident of California, the others being non-residents! The fiduciary return filed for the trust for 1937 showed no tax to be due, the trustees claiming that no part of the net income was taxable, since it arose without the jurisdiction of the State.

The Commissioner, in auditing the return, determined that of an amount of \$19,916.02 claimed as a deduction from income as business expenses only \$3,099.57 was properly allowable, and, consequently, increased the net income by the amount of \$16,816.45. Seven-eighths of the revised net income was determined to be taxable under Section 12 of the Personal Income Tax Act on the ground that persons residing in California were beneficially interested in the trust estate to that extent. That Section, in so far as pertinent, provides as follows:

"(c) Except as otherwise provided in subsections (d), (g) and (h) of this section, the income of an estate or trust shall be taxable to the estate or trust. The tax shall apply to the entire net income if, in the case of an estate. The decedent was a resident, regardless of the residence of the fiduciary or beneficiary, and in case of both estates and trusts, if the fiduciary or beneficiary is a resident, regardless of the residence of the settlor.. .

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Where the taxability of income under this subsection depends on the residence of the beneficiary and there are two or more beneficiaries for the estate or trust, the income taxable under this subsection shall be apportioned according to the number and interest of beneficiaries resident in this State, such apportionment being determined according to rules and regulations prescribed by the **commissioner.**" (Emphasis supplied.)

The Appellant contends that California is without jurisdiction to tax the income of the trust to any extent whatsoever; that in any event the entire \$19,916.02, being the amount expended in the year 1937 for trustees' commissions, legal fees, and expenses, such as rent, office expense, wages, safe deposit and investment service, is deductible as ordinary and necessary expenses within the purview of Section 8(a) of the Personal Income Tax Act; and that assessment of the proposed deficiency is barred by Section 19 of the Act, as amended in 1939.

These contentions of the Appellant are not, in our opinion, well founded.

The action of the Commissioner in taxing the income of the trust to the extent to which persons residing in this State were beneficially interested in the trust is in accordance with Section 12(c) of the Act. The authority of the State so to impose its tax is upheld by Stewart Pennsylvania, 338 Pa. 9, 12 A. (2d) 444, aff'd. 312 U. S. 649; Curry v. McCanless, 307 U. S. 357.

The Commissioner was justified in disallowing that portion of the trustees' commissions, legal fees and other expenses not incidental to the real estate income of the trust. Higgins v. Commissioner, 312 U. S. 212; Meanley v. McColgan, 49 Cal. App. (2d) 203. The Appellant has pointed out that Congress has by recent legislation (Section 121(a) of the Revenue Act of 1942), in effect, overruled the Higgins decision and related cases and -has suggested that this "expressed policy ought to be adopted in California in the interest of convenience and uniformity." While Section 8(a) of the Personal Income Tax Act was amended in 1943 to conform to the federal law, this amendment is applicable only to taxable years beginning after December 31, 1942. To give retroactive application thereto would be violative of Section 31 of Article IV of the State Constitution. Estate of Stanford, 126 Cal. 112.

The assessment of the proposed deficiency is not, in our opinion, barred under Section 19 of the Personal Income Tax Act. On the authority of Davis & McMillan v. Industrial Accident Commission, 198 Cal. 631; Doehla v. Phillips, 151 Cal. 488; Weldon v. Rogers, 151 Cal. 432; and Swamp Land District No. 307 v. Glide, 112 Cal. 85, we held in the Appeal of C. L. Duncan (March 9, 1944) that the 1939 amendment to Section 19 extending the limitation period from three to four years was applicable to assessments not barred on the effective date of the amendment. The contention that the change in the limitation period relates to the computation of taxes within the meaning of Section 23 of the amendatory act was rejected

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in that Appeal, it being stated in that connection as follows:

"It appears that the purpose of the second clause of the Section, which states that the act shall be applied in the computation of taxes accruing subsequent to December 31, 1938, is to overcome the presumption against retroactivity and to provide for a limited retroactivity of the provisions of the act relating to the computation of taxes. These provisions relate to such matters as inclusions in or deductions from gross income. It should be observed that the Legislature did not provide, as it might easily have done had it so desired, that the act shall be applied to the assessment and collection, as well as the computation, of taxes accruing subsequent to December 31, 1938."

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 overruling the protest of the Estate of William A. Slater to a proposed assessment of additional tax in the amount of \$296.76 for the year ended December 31, 1937, pursuant to Chapter 329, Statutes of 1935, as amended, be and the same is hereby sustained.

Done at Los Angeles, California, this 31st day of May, 1944,
by the State Board of Equalization.

Wm. G. Bonelli, Member
J. H. Quinn, Member
Geo. R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary