

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
PAUL V. ELDOR)

For Appellant: Paul V. Eldor, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

Paul J. Petrozzi
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 protest of Paul V. Eldor, against proposed assessments of additional personal income tax in the amounts of \$220.63, \$633.22, and \$988.17 for the years 1966, 1967 and 1968, respectively,

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Prior to 1940 appellant created two irrevocable trusts; the **Eldor** Investment and Charity Trust (Charity) and the **P. V. Eldor** Charity Trust (PV). Charity's corpus consisted primarily of stocks and business assets, apparently valued in excess of \$160,000. Charity's **principal** beneficiary was **PV**, and **PV's** principal beneficiary was the "Mother Church, the First Church of Christ, Scientist" (the Church). The trusts were assertedly established to benefit the Church's charitable fund. Thereafter, the Church periodically received small contributions from appellant individually, but according to its general counsel the Church did not receive any money from the trusts prior to 1970. Appellant also has allegedly never received any of the trust income, although the trust agreements provided that he be paid an annual pension.

Appellant was the trustee of both PV and Charity. The trust agreements gave the trustee "the power to do anything he shall consider necessary to accomplish the object of the Trusts.--For the production of income said Trustee shall have every power and authority over the Trusts Estate that he would have if as an individual he were the absolute owner thereof.;...!! Specifically included was a power in the trustee to hold trust assets in his own name. In addition, appellant as grantor reserved the right to amend the trust at any time to obtain tax advantages.

The **Internal Revenue** Service issued deficiency assessments against appellant for the years 1953, 1954 and 1955, asserting that he was taxable on the income of Charity and PV. The Tax Court ultimately upheld the deficiencies on the ground that the trusts were shams designed solely to avoid income tax. (Paul V. Eldor, T.C. Memo, Dec. 30, 1960.) Subsequently the Service issued additional assessments against appellant for the years 1968, 1969 and 1970, apparently on the same theory, and appellant again petitioned the Tax Court for a re-determination. After appellant had agreed to make various amendments to the trust agreements, however; appellant and the Service stipulated to the Tax Court that a deficiency was owing for 1968 but no deficiencies were due for 1969 or 1970.

The principal question in this appeal is whether appellant is taxable on the income of Charity and PV for the years 1966, 1967 and 1968. We have concluded that he is. As the Tax Court said in Paul V. Eldor, supra:

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This is not to say as a general rule that the income of a trust legally created and administered may be lightly attributed to the settlor and taxed to him. When, however, one attempts such a scheme, particularly by placing himself in the equivocal position of being both the settlor and the trustee, he must execute the plan with the most exact, even meticulous, adherence to it. The integrity of each detailed act must be established. If there is any shilly-shallying by him, he cannot expect the Government to give recognition to a structure for which he himself has less than a high regard. While a tax-saving motive does not vitiate a plan otherwise legal, it may serve, when coupled with loose and inexact administration, to confirm a suspicion that the plan is one without substance or reality. (Quoting from William C. Rands, 34 B.T.A. 1107, 1115 (1936).)

Although the years before the Tax Court were prior to those at issue here, the same reasoning applies. The record establishes that appellant retained absolute dominion and control over the trusts throughout the years on appeal, and that the trusts were mere shams to be disregarded for tax purposes. (See Helvering v. Clifford, 309 U.S. 331 [84 L. Ed. 788] (1940).) The fact that appellant may have amended the trust agreements for 1969 and later years is not relevant to the years on appeal.

Appellant suggests that a pension or annuity which he was entitled to receive from the trusts was capital gain and not ordinary income. His only evidence on this point is a statement in the trust agreements that the pension shall be considered a return of capital for tax purposes. Appellant bears the burden of proving facts which entitle him to the benefits of capital gain treatment (Appeal of Dale H. and Suzanne DeMott, Cal. St. Bd. of Equal., April 5, 1976), and the statements in the trust agreements do not meet this burden.

For the above reasons, we sustain respondent's action.

