



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
GEORGE M. AND RUBY L. GULICK)

Appearances:

For Appellants: George M. Gulick,
in pro. per.

For Respondent: James C. Stewart
Counsel

O P I N I O N

These appeals are made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of George M. and Ruby L. Gulick against proposed assessments of additional personal income tax and penalties in the total amounts of \$801.01, \$1,491.38, and \$2,524.90 for the years 1977, 1978, and 1979, respectively.

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The principal issue is whether appellants' contracts with their purported family trust were sufficient to shift the incidence of taxation from the income-earning individuals to the trust.

Appellants are husband **and wife** and filed jointly for the taxable years 1977, 1978, and 1979. In **October** 1976, appellants apparently established the "George M. Gulick Trust," and the trust filed fiduciary returns for 1977, 1978, and 1979. In each of their returns, appellants reported their total income from wages and other miscellaneous sources but deducted therefrom certain payments of "Nominee Income" made to the trust. The trust returns for the corresponding years reported appellants' payments as income. However, the **trust** also claimed deductions roughly equal to the amounts reported as income. Most of these claimed deductions represented expenditures incurred in paying the personal expenses of appellants for **such items** as housing, auto, utilities, and phone.

In order to determine the validity of these transactions, respondent contacted appellants and requested information **concerning the** trust document. Appellants did not respond. On the basis of the information available, respondent determined that the trust was invalid for income tax purposes and issued notice.³ of proposed assessment for the aforementioned years. Appellants protested, but respondent affirmed the assessments and this appeal followed.

It is a fundamental principle of income taxation that income must be taxed to the one who earns it. (Commissioner v. Culbertson, 337 U.S. 733, 739-740 [93 L.Ed. 1659] (1949); Meanley v. McColgan, 49 Cal.App.2d 203 [121 P.2d 45] (1942).) Furthermore, one who earns income cannot avoid tax liability for that income by assigning the earnings before they are earned, but in anticipation of their receipt. (United States v. Basye, 410 U.S. 441, 449-450 [35 L.Ed.2d 412] (1973).)

In respondent's view, appellants have merely attempted to avoid taxation of their income by diverting it to another entity which has no economic **reality**. Consequently, respondent sees the trust arrangement as a nullity for income tax purposes. Alternatively, respondent argues that the trust arrangement is in reality an anticipatory assignment ineffective to shift the tax burden from appellants or that appellants are taxable on the trust's income because it is a grantor trust. Since

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we agree with respondent's primary contention, we need not discuss the alternative arguments.

It is of no small significance that appellants have not submitted a copy of the purported trust document. They have, however, presented certain employment contracts indicating a transfer of their services to the trust. Appellants believe that this particular relationship with the trust shifts the incidence of taxation to the trust, Appellants, however, overlook the fact that the incidence of taxation depends on the substance of a transaction (Commissioner v. Court Holding Co., 324 U.S. 331 [89 L.Ed. 981] (1945)), and that taxes cannot be escaped "by anticipatory arrangements and contracts however skillfully devised ... by which the fruits are attributed to a different tree from that on which they grew." (Lucas v. Earl, 281 U.S. 111, 115 [74 L.Ed. 731] (1930).)

Appellants have presented no evidence that their relationship with the income allegedly transferred to the trust changed in any material way before and after the creation of the trust or the agreements therewith. They apparently continued their employments and personal lives as before, the only difference being that most of their living expenses were paid by the trust. The funds for those expenses, nonetheless, came from appellants' own income. Under these circumstances, we find that appellants' trust arrangement was founded on meaningless pieces of paper and therefore **must be** disregarded for income tax purposes. Respondent's action in regard to the proposed additions to tax is, therefore, sustained.

Appellants' claimed deductions for the expenses incurred in establishing the family trust at issue were **also** properly disallowed. Expenses of that sort are personal and nondeductible. (Louis P. Contini, 76 T.C. 447 (1981); Donald F. Shuman Equity Trust, ¶ 81,264 P-H Memo. T.C. (1981).)

The next item for our determination is whether appellants are liable for the negligence penalty imposed under section 18684 for the year 1979. Appellants argue that there was no negligence since there had been no administrative or judicial interpretations regarding family trusts at the time they arranged their trust. We rejected a similar argument in the Appeal of Edward B. and Betty G. Gillespie, decided on Oct. 27, 1981. For the same reasons cited in Gillespie, we reject appellants' equivalent argument in the instant matter. The negligence penalty is sustained.

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With regard to the remaining penalties for failure to provide information, imposed pursuant to the authority of section 18683, they **must also be sustained** as nothing has been submitted to overcome the presumption of correctness attaching to respondent's determination. (Appeal of John L. Sullivan, Cal. St. Bd. of Equal., Jan. 8, 1980.)

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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 protests of George M. and Ruby L. Gulick against proposed assessments of additional personal **income** tax and penalties in the total amounts of \$801.01, **\$1,491.38**, and **\$2,524.90** for the years 1977, 1978, and 1979, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 15th day of September, **1983**, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. **Collis**, Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

<u>William M. Bennett</u>	, Chairman
<u>Conway H. Collis</u>	, Member
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Richard Nevins</u>	, Member
<u>Walter Harvey*</u>	, Member

*For Kenneth Cory, per Government Code section 7.9