



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of,)  
WILLIAM H. POWELL )

Appearances:

For Appellant: Kenneth E. Grant, Attorney at Law

For Respondent: Harrison Harkins, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 19 of the Personal Income Tax Act, Statutes of 1935, p. 1090, as amended, from the action of the Franchise Tax Commissioner in overruling the protest of William H. Powell to his proposed assessment of additional tax for the year ended December 31, 1935, in the amount of \$156.12.

The appeal involves the liability of the Appellant for income tax on the income of a trust established by him pursuant to a property settlement agreement entered into between himself and his then estranged wife. The agreement, which was ratified, confirmed, and approved by the interlocutory and final judgments of divorce subsequently obtained by the wife in the Superior Court of Los Angeles County, provides for the settlement of the property rights resulting from their marital status, the custody of their minor child, and the maintenance and support of the wife and child. Under it, the obligations of the Appellant, subject to certain qualifications not material here, were to make consecutive weekly payments to the wife of \$100 per week to be used by her for her support and maintenance, said payments to continue until the establishment of the trust fund, and in any case until 104 payments had been made; to pay to the wife, while the child was in her sole custody, the sum of \$25 per week as an allowance for a nurse for the child; to pay "for the clothing and schooling and medical attention of the child;" and to establish a trust fund in the amount of \$25,000, which was expressly stated to be "for the benefit of the wife and child." The trustee is required to pay the income of the trust fund to the wife until her death or remarriage. In the event of the death of the wife, one-half of the trust fund is to be paid to the child and the other one-half to the Appellant, subject to his making satisfactory provision that the wife's mother shall receive the income from \$7,500 during her lifetime. In the event of the remarriage of the wife, \$10,000 is to be paid to her and the balance to Appellant, or if he is not living, to the child.

It appears from the opening brief filed herein by the Respondent that the assessment was proposed on the theory that

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the purpose of the trust was to discharge the Appellant's obligation to support his wife, and that therefore the trust income was taxable to him under the decision of the United States Supreme Court in Douglas v. Willcuts, 296 U. S. 1. Subsequent to the filing of this brief, however, the Supreme Court held in Helvering v. Fuller, 310 U. S. 69, that when a trust agreement such as the one presented herein is approved in a divorce decree, and under the law of the state the court has no power to alter the terms of its decree with respect to the wife's support, so that as a result the husband is discharged from all further obligation in that respect, the trust income is not taxable to the husband in the absence of specific statutory authorization. Although the Respondent concedes that under California law a court has no power to alter the terms of a divorce decree under the circumstances presented here, and that if the trust income were used for the support of the wife alone, it would not be taxable to Appellant, he now seeks to justify the proposed assessment on the ground that the trust income was used to satisfy a continuing obligation on the part of Appellant to support his son. While the Appellant does not deny the existence of such an obligation on his part, he does deny that any portion of the trust income was used for his child's support.

The position of the Respondent on this issue is based exclusively on the fact that the agreement recites that it provides for "the maintenance and support of the wife and child" and that the trust was to be established "for the benefit of the wife and child." In our opinion, however, these recitals do not indicate that any portion of the trust income was to be devoted to the child's support, as they may readily be accounted for by the facts that independently of the trust arrangement the Appellant is obligated by the agreement to pay an allowance for a nurse and to pay for the clothing, medical needs and education of the child, and that the child has certain contingent rights in the corpus of the trust fund. It is to be observed that the trustee is directed to pay the entire trust income to the wife, and that there is no language suggesting that the latter is under any obligation, either legal or moral, to devote any portion of the income to the child's support. On the contrary, the fact that the trust income was apparently intended to supersede the weekly payments provided for in the preceding paragraph of the agreement, which payments were expressly stated to be for the wife's support and maintenance, indicates that the trust income was likewise to be used for that purpose and to belong to her absolutely. In view of these considerations, we are unable to agree with the contention of the Respondent that the trust income was used for the support of the child. It follows that his action in treating such income as income of the Appellant was improper and may not be sustained,

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

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Chas. J. **McColgan**, Franchise Tax Commissioner, in overruling the protest of **William H. Powell** to a proposed assessment of additional tax in the amount of **\$156.12** for the taxable year **1935**, be and the same is hereby reversed. Said ruling is hereby set aside and the said Commissioner is hereby directed to proceed in conformity with this order.

Done at Sacramento, California, this 16th day of June, 1942  
by the State Board of Equalization.

**R. E. Collins**, Chairman  
Wm. G. Bonelli, Member  
George **R. Reilly**, Member  
Harry B. Riley, Member

ATTEST: Dixwell L. Pierce, Secretary