

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA



In the Matter of the Appeal of)
ESTATE OF LOUIS W. MORRISON, DECEASED,)
MORRISON MORRISON, EXECUTOR)

Appearances:

For Appellant: Morrison Xorrison, Executor
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 18593 of the Revenue and Taxation Code (formerly Section 19 of the Personal Income Tax Act) from the action of the Franchise Tax Commissioner on the protest of the Estate of Louis W. Morrison, Deceased, Morrison Morrison, Executor, to proposed assessments of additional personal income tax in the amounts of \$356.62 and \$494.26 for the taxable years 1936 and 1938, respectively.

The will of Louis W. Morrison, who died March 26, 1935, provided for the transfer of all his property in trust to his wife and two children. The net income of the trust was to be paid in equal shares to these individuals during the lifetime of the wife and after her death the assets of the trust were to be divided equally between the children.

Morrison Xorrison duly qualified as Executor of the Estate in March, 1935, and during the taxable years in question income received by the Estate was distributed to him as trustee in accordance with the will. In the income tax returns filed on behalf of the Estate for 1936 and 1938 these distributions were deducted, pursuant to Section 12(c) of the Act, as income currently distributed by the fiduciary to the beneficiaries.

The deduction is authorized by Section 12(c)(3) of the Act, as respects the year 1936, and Section 12(d)(3), as respects the year 1938, which read in part as follows:

"In the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and in the case of income which, in the discretion of the fiduciary, may be distributed to the beneficiaries or accumulated, there shall be allowed as an additional deduction. . . . the amount

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"of income. . . which is properly paid or credited . . . to any legatee, heir or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir or beneficiary."

This provision was construed in Malmgren v. McColgan, 20 Cal. 2nd, 424, which set forth the following specifications for the allowance of the deduction to the Estate:

"(1) The income must be received during the administration of the estate; (2) it must be income of the estate for its taxable year; (3) it must be paid or credited to the legatees properly, and (4) during that taxable year."

No question has been raised by the Commissioner as respects Items 1 and 2 of those specifications. To establish compliance with Items 3 and 4, the appellant has submitted in evidence certain cancelled checks indicating payment by the Estate to Morrison Morrison, as Trustee, of the amount of the asserted deductions for 1936 and 1938. Mr. Morrison testified that distributions were made during these years from the trust to the beneficiaries in accordance with provisions of the will and the Commissioner has submitted no testimony or other evidence to the contrary. We conclude, accordingly, that the appellant is entitled to deductions claimed by it. It is not essential that the distributions be made pursuant to a court order to warrant the allowance of the deductions to the Estate, but merely that the distributions be made in accordance with the provision of the will. Estate of Harwood, 3 T.C. 1104. The distribution by the Estate to the trust constituted, in our opinion, payments to the legatee properly during 1936 and 1935 in compliance with Items 3 and 4 of the Malmgren case. As respects 1936, the payment was made to the trust for the benefit of the three designated heirs as provided by the will. The Commissioner has not questioned the propriety of the continuation of the trust through 1938 following the death of the wife in 1937. On the other hand he has conceded that the heirs, who are also the beneficiaries of the trust, reported on their individual returns the amounts paid to the trust for their benefit and paid by the trust to them in 1938, as well as 1936. Under these circumstances, there is sufficient basis for the allowance of the deduction claimed by the Estate for the year 1938 in the amount of its payment of income to the trust.

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 Chas. J. McColgan, Franchise Tax Commissioner, on the protest of

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Estate of Louis W. Morrison, Deceased, Morrison Norrison, Executor, to proposed assessments of additional personal income tax for the taxable years 1936 and 1938 in the amounts of \$356.62 and \$494.26, respectively, 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, this 17th day of November, 1948, by
the State Board of Equalization.

Wm. G. Bonclli, Chairman
J. H. Quinn, Member
J. L. Seawell, Member
Geo, R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary