

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA



In the Matter of the Appeal of)
VIDA C. HALLIBURTON)

Appearances:

For Appellant: Francis J. McEntee,
Attorney at Law
For Respondent: W. M. Walsh, Assistant
Franchise Tax Commissioner;
Milton A. Huot, Assistant
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 protests of Vida C. Halliburton to proposed assessments of additional personal income tax in the amounts of \$2,285.56, \$2,736.93 and \$3,203.50 for the years 1939, 1940 and 1941, respectively,

This appeal-presents a general factual situation almost identical with that considered this day with respect to the taxability of the income of five trusts created by Appellant's husband, Erle P. Halliburton, for their children. One difference is that Appellant is the trustor in each case. Another is that Appellant contributed her separate property to the trusts in the instant matter. As is in the companion case, the trust properties consisted originally of cash and later of the same kind of stock as was substituted for the cash in the former. Furthermore, unlike the situation in Mr. Halliburton's trusts, Appellant is not both trustor and trustee, Mr. Halliburton being named to act in the latter capacity.

Not only are the facts here substantially the same as in the Appeal of Erle P. Halliburton, but so also are the issues. Their determination, however, requires a somewhat different approach.

First, as to the question of whether the rule in the Stuart and Borroughs cases are applicable, we are confronted with the proposition that in California a wife's liability for the support of her minor children is secondary to that of her husband if the latter has custody of the children and is able to provide for them. Civil Code Section 196; Fox v. Industrial Accident Commission, 194 Cal. 173; Blair v. Williams, 86 Cal. kpp. 676; Metson v. Metson, 56 Cal. App, 2d 328. There is nothing in our record indicating that Mr. Halliburton did not have custody of the children and-that he was unable to take care of their needs.

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Commissioner v. Yeiser, 75 Fed. 2d 956, and Lillian M. Newman, 1 T.C. 921, involved irrevocable trusts created by a wife for the benefit of her children, in each of which the husband was named trustee. It appears in each that under the law of the state to which the trusts were subject (Ohio in the first case and New York in the second), the wife's liability for the support of her minor children was, like that here in California, secondary to her husband's. Chiefly on that ground, but also because, as in this case, the wife retained no control of the purse strings of the particular trusts to any extent for her own benefit, the income was held not taxable to her. The Newman case is specially significant in the present connection inasmuch as the Commissioner of Internal Revenue, like the Franchise Tax Commissioner here, contended that the wife's secondary liability for support made the trust income taxable to her under the Stuart case.

On the basis of these authorities, accordingly, the Stuart-Barroughs Rule must be held inapplicable in this matter.

We are further of the opinion that the principle of the Clifford case is even less in point here than in the Appeal of Erle P. Palliburton. Appellant relinquished all control, whether as trustor or otherwise, over the trust properties and income therefrom upon establishing the trusts. Thereafter, any control that might have been exercised could only have been exercised by her husband in his capacity as trustee.

ORDER

Pursuant to the views 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 protests of Vida C. Halliburton to proposed assessments of additional personal income tax in the amounts of \$2,285.56, \$2,736.93 and \$3,203.50 for the years 1939, 1940 and 1941, respectively, be and the same is hereby reversed.

Done at Sacramento, California, this 16th day of December, 1948, by the State Board of Equalization.

Wm. G. Bonelli, Chairman
J. H. Quinn, Member
J. L. Seawell, Member
Geo. R. Reilly, Member
Thomas H. Kuchel, Member

ATTEST. Dixwell L. Pierce, Secretary