



Appeal of Estate of Harriet Allen Heath, deceased.

The Appellant estate has been allowed a deduction for the amount specifically made payable to the charity made in the will of Mrs. Heath. However it contends that it is also entitled to a deduction of the remainder of its income during the year in question which was destined to be paid to charity through the will of Mr. Heath. The position of the Franchise Tax Board is that these amounts were not payable to charity "pursuant to the terms of the will" of Mrs. Heath.

Appellant states that a narrow construction would defeat the beneficent purpose of the statute and points out that a tax upon the income in question will decrease the amount which will go to charity. In support of its position it cites Old Colony Trust Company v. Commissioner, 301 U.S. 379; United States v. Provident Trust Co., 221 U.S. 272; Lederer v. Stockton, 260 U.S. 99; and Union and New Haven Trust Co. v. Eaton, 20 Fed. 2d 419.

Of those cited, the case most nearly in point and most favorable to Appellant is Old Colony Trust Company v. Commissioner. That case involved the federal counterpart of Section 18132. It was there held that a trust could properly deduct payments to a charity made under a provision of the trust deed authorizing such payments in the discretion of the trustee. The court stated:

We are asked to hold that the words "pursuant to" mean directed or definitely enjoined. And this notwithstanding the admission that Congress intended to encourage charitable contributions by relieving them from taxation ..."

"'Pursuant to' is defined as 'acting or done in consequence or in prosecution (of anything); hence, agreeable; conformable; following; according.\*"

"The words of the statute are plain and should be accorded their usual significance in the absence of some dominant reason to the contrary..."

It is true that the cases cited by Appellant advocate a liberal construction of the statute. However, the Appellant has shown us no case, and we have discovered none in which the deduction was upheld where there was no authorikation in the will or trust instrument for making the charitable gifts. To the contrary, it has been held that the estate is not entitled to a deduction where there is no provision in the will for the payment to charity (Heywood, et al, Executors, 11 B.T.A. 29. See also Moorman Home for Women v. United States, 42 Fed. 2d 257).

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It has not been made apparent to us why a different result should follow here due to the circumstance that the death of Mr. Heath so soon followed that of Mrs. Heath. The estate of Mrs. Heath did not make a gift of the income involved to charity. The income was payable to the estate of Mr. Heath, and the gifts were to be made by virtue of his will. If the executors of Mrs. Heath had given the money to charity they would have done so in contravention of her will. It cannot reasonably be said that the income was permanently set aside for charity "pursuant to the **terms**" of her will, nor would the purpose of the statute, the encouragement of charitable donations, be served by granting a deduction to her estate. The fact that the tax may decrease the amount which will ultimately go to charity cannot justify overriding the plain requirement of the statute.

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of the Estate of Harriet **Allen Heath** for a refund of personal income tax in the amount of **\$13,693.46** for the year ended May 31, 1949, be and the same is hereby **sustained**.

Done at Los Angeles, California, this 14th day of November, 1955, by the State Board of Equalization.

J. H. Quinn, Chairman

Paul R. Leake, Member

Geo. R. Reilly, Member

Robert E. McDavid, Member

Robert C. Kirkwood, Member

ATTEST: Dixwell L. Pierce, Secretary