



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
THE FIRST NATIONAL BANK OF CHICAGO,)
TRUSTEE FOR VIRGINIA KIRK CORD)
TRUST, ET AL.)

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For Appellant: Edward D. Neuhoff, Attorney at Law
For Respondent: Burl D. Lack, Chief Counsel;
Israel Rogers, Assistant Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of The First National Bank of Chicago, as Trustee, against proposed assessments of additional personal income tax against the following trusts in the amounts and for the years indicated:

Virginia Kirk Cord Trust	1953	\$		112.96
	1954		236.54	
Charles Errett Cord Trust	1953		1 2 1 . 5 4	
	1954		229.15	
	1955		112.58	
Nancy Virginia Cord Trust	1952		1,584.69	
	1953		122.38	
Sally Kirk Cord Trust	1952		2,047.53	
	1953		2,142.04	
	1954		3,039.14	

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Billy James Cord Trust	1953	\$ 5.53
	1955	828.17
Susan Errett Cord Trust	1952	312.92
	1953	376.20
	1954	895.25
	1955	1,537.73

The trusts involved in this appeal were created by E. L. Cord for the benefit of his wife, Virginia Kirk Cord, and children. The trusts for Virginia Kirk Cord, Charles Errett Cord, Nancy Virginia Cord and Sally Kirk Cord were executed on August 21, 1935. The trust for Billy James Cord was executed on December 28, 1935, and for Susan Errett Cord on May 1, **1945**. All of the trust instruments originally designated E. L. Cord as trustee. On October **18**, 1948, appellant bank replaced Mr. Cord as trustee for the several trusts. The trusts' assets were delivered to appellant and since October 22, 1948, have been in its sole possession and control, administered by appellant from its place of business in Chicago, **Illinois**. Appellant has never done **business** in California.

The trust instruments provided that the trustee could **accumulate** income during the minority of each income beneficiary, or distribute it for the beneficiary's **support, maintenance**, and education. Upon **reaching age 21**, all of the current income was to be distributed to the beneficiary during his or her lifetime; Upon death of the income beneficiary, the trust principal and any accumulations were to be distributed to the beneficiary's surviving issue when the youngest reached age 21. In the absence of such issue, the trust estate was to be divided among the remaining trusts or **the** surviving issue of the other beneficiaries and in the absence of either other trusts **or** issue, the estate was to be distributed according to the applicable laws of succession,

Billy James Cord died in 1945 and was survived by his **son, Christopher** Stephen Cord, who was a minor and a **resident** of this state during the years in question. Nancy Virginia Cord reached age 21 on November. 10, 1952, was married **on** July 4, 1953, and was a California resident until she took up residence in Ohio **some** time in September 1953; Sally Kirk Cord was married

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on July 27, 1952, reached age 21 on November 28, 1954, and left this state to establish a **home in** Texas on July 25, 1955. Charles Errett Cord was a resident of California until September 30 1955, when he established residence in Nevada, E. L. Cord, his wife, Virginia Kirk Cord, and minor daughter, Susan Errett Cord, were residents of this state until July 10, 1955.

The trusts derived, a large portion of their income from sources outside this state **but all** of them had some income from California **sources**. Appellant reported only the latter income on its fiduciary returns filed for **the years on** appeal,

The Franchise Tax Board acting under section 17742 (**formerly 18102**) of the Revenue and Taxation Code, proposed additional assessments, Most of the notices of proposed assessments **were** addressed to appellant as trustee for the various trusts (**i.e.**, "The First National Bank of Chicago, Trustee for **E. L. Cord Trust T/A 37503**"), but three were addressed to the particular **trust**, in care of appellant (**i.e.** "**E. L. Cord Trust T/A 37503; c/o The First National Bank of Chicago, Trustee for Sally Kirk Cord**"). With certain **exceptions**, the reason stated in each notice was that the beneficiary was a resident of California, The **notices** for the Sally Kirk Cord Trust and the Susan Errett Cord Trust for 1953 and 1954 stated that **E. L. Cord** was the fiduciary and a resident of this **state**. The notice for the Susan Errett Cord Trust for 1955 stated that the grantor and the beneficiary were California residents, The amounts thus considered taxable included all of the income of the trusts, from whatever source derived, for those periods preceding the above stated dates at which the respective beneficiaries ceased to be residents.

Until 1963, when an amendment relating to contingent beneficiaries was added, section **17742** (formerly 18102) provided, in part, that the "**tax applies ... to the entire taxable income of a trust, if the fiduciary or beneficiary is a resident, regardless of the residence of the **settlor**."**

 (Emphasis added.)

Appellant has contended that **E. L. Cord**, his **wife**, Virginia Kirk Cord, and daughter, Susan Errett Cord, **were not** residents of California during the, years in question. It has also alleged that Sally Kirk Cord and Nancy Virginia Cord were not residents here **until** the respective-dates of their marriages,

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July 27, 1952, and July 4, 1953. With respect to the years 1949, 1950 and 1951, we decided this same question adversely to **appellant** in the Appeal of The First National Bank of Chicago, Trustee for Charles Errett Cord Trust, et al., Cal. St. Bd. of Equal, , Dec. 13, 1960, which dealt with the same trusts now before us., Since appellant has failed **to offer** any evidence in support of its assertions, we have concluded that Mr. and **Mrs.** Cord and their daughters were residents of this state for the periods determined by respondent.

Appellant argues that the California law expressly provides that an income tax may be levied against a **non-resident estate** only on income derived from sources within **this state**, citing article XIII, section 11 of the California Constitution and **sections 17041** (formerly **17052**), and 17951 (formerly **17211**) of the Revenue and Taxation Code. We considered substantially this same argument in appellant's prior appeal wherein we held that former section 18102, containing the above quoted provisions of section 17742, clearly imposed a tax on all of the net income of a trust if all of the beneficiaries were residents of California regardless of the residence of the trustee or **the settlor**. As stated in our prior opinion, the income thus taxable includes undistributed income accumulated **as part** of the trust estate and capital gain accumulated for the benefit of unascertained **remaindermen**.

Appellant also urges that section 17742 (formerly 18102) is unconstitutional if it purports to tax the non-California income of a foreign trust which is administered by a nonresident trustee. This argument has been fully answered by the California Supreme Court in McCulloch v. Franchise Tax Board,* 61 Cal, 2d [37 Cal, Rptr. 636, 390 P.2d 412], wherein the court held that California could constitutionally tax a Missouri trust on income which was payable in the future to a beneficiary residing in this state, although such income was actually retained by the trust. The fact that the resident beneficiary was also one of the trust's three trustees was not relied upon by the court in holding that the residence of the beneficiary afforded a constitutionally sufficient connection to bring the **trust's** income within **California's** tax jurisdiction,

Appellant contends that all but three of the notices of proposed assessment issued by respondent are **invalid because**

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they were addressed to appellant as trustee **rather than** to the **individual** trust, Section 17742 (formerly 18102) states in part: "... the income of an estate or trust is taxable to the estate or **trust.**" It is argued that valid assessments can only be made against the taxpayers liable for the tax which in this **case were** the trusts and not the trustee, The Franchise Tax Board states that while section 17742 imposes the tax on the **trust, sections 17731, subdivision (b) (formerly 18105)** and 18405 impose upon the trustee a duty **to report** trust income and pay a **tax** thereon, and therefore the trustee qualifies as a taxpayer,

We need not decide whether the trustee should be considered the taxpayer for, in any case, we think the notices were valid, Even assuming that the notices were technically defective, appellant has failed to show that there was any prejudicial delay or that the notices did not answer every **purpose** of "correct" notices, The alleged defects certainly did not mislead appellant nor did they in any way prejudice appellant's privilege to protest the assessments, (See **Olsen v. Helvering, 88 F.2d 650, 651.**)

Relying on section 18584, which requires each notice of proposed assessment to set forth the reasons for such additional assessment, appellant contends that the notices which were issued on the ground that E. L. Cord was a resident fiduciary are invalid, It appears that on October 18, 1948, **Mr. Cord** formally relinquished all of his powers as trustee, and that he could no **longer be considered** a fiduciary with respect to any of the trusts in question, Thus the proposed assessments could only be based on the resident status of the beneficiaries.

The purpose of section 18584 is to inform the taxpayer of the basis of the assessment **so** that he can intelligently protest the **matter.** (Section 18590 requires that a protest must specify the grounds upon which it is based.) While respondent's notices were erroneous, **appellant nevertheless** made all the necessary contentions with regard to the proper ground, **that is,** the residence of the beneficiaries, and it has not been shown that the error in any **way** prevented the filing of an effective protest. As **we** have held with **respect** to the alleged error in addressing

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the notices, the defect must be considered negligible and insufficient to void the proposed assessment. (See also, Appeal of Robert Campbell; Executor, Cal, St.. Bd, of Equal,, June 20, 1950.)

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 The First National Bank of Chicago, as Trustee, against proposed assessments of additional personal income tax against the trusts and in the amounts and for the years set forth in the opinion on file herein, be and the same is hereby **sustained**.

Done at Sacramento , California, this 23^d d a y of June , 1964, by the State Board of Equalization.

Paul R. Leake , Chairman
Alan Brantley , Member
Geoffrey , Member
John W. Lynch , Member
Richard , Member

ATTEST: [Signature] , Secretary