

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MRS. LYDIA J. HANSEN)

For Appellant: Harold R. Brown

For Respondent: Burl D. Lack, Chief Counsel;
Donald H. Reinholdt, Junior 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 protest of Mrs. Lydia J. Hansen against proposed assessments of additional personal income tax in the amounts of \$94.17, \$208.32, \$236.39 and \$275.59 for the years 1958, 1959, 1960 and 1961, respectively.

Alfred Hansen died on May 12, 1952. The decedent's will named his wife, appellant Lydia J. Hansen, his only child, Catherine Hansen Brown, and his son-in-law, Harold R. Brown, as executors and provided that after the fulfillment of four specific bequests totalling \$25,000, the residue of the estate was to be transferred to a testamentary trust to be administered by Catherine Hansen Brown and Harold R. Brown as co-trustees. Appellant was to receive the net income from the trust until her remarriage or death.

The estate has remained open since 1952. In that year it had about \$4,800 in cash and a portfolio consisting of stocks and bonds having an approximate value of \$200,000. The amount of cash retained by the estate remained approximately the same in 1964, while the value of the stocks and bonds in that year had risen to \$257,597. The securities were

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mainly common **stocks** of a type which are traded in the major 'stock exchanges or over the counter. The estate reported total income in the amount of \$13,632.96 for 1958, \$14,540.45 for 1959, \$14,131.52 for 1960, and \$17,266.69 for 1961. **Appellant** received a family allowance of \$8,700 from the estate of her late husband during 1958 and \$8,400 during each of the years. 1959, 1960 and 19.61. The expenses of the estate included' death taxes aggregating \$9,791.98.

On the ground that the administration of Mr. **Hansen's** estate had been unduly prolonged and should be considered to have terminated for *income* tax purposes by December 31, 1957, respondent added the income of the estate for the years 1958, 1959, 1960 and 1961 to the income of appellant, as if the estate were **in** fact terminated and the 'testamentary trust established on her behalf..

Section 17731, subdivision (a)(3) of the Revenue and Taxation Code provides that income received by an estate of a deceased person during the period of administration or 'settlement of the estate is taxable to the estate, Respondent's regulations provide:

The period of administration or settlement is **the period** actually required by the **adminis-**trator or executor to perform the ordinary duties of administration, such as the collection of assets and the payment of debts, taxes, **legacies, and** bequests, whether the period required is longer or shorter than the period specified under the applicable local law for settlement of estates.... However, the period of administration of an estate cannot be unduly, prolonged., If the administration of an estate is unreasonably'prolonged, the estate is considered terminated for income tax purposes **after** the expiration of a reasonable period for the **performance** by the executor of **all** the duties of administration., (Cal. Admin. Code, tit. 18, r e g . 17731(g).)

Section 17731 is similar to section 641(a)(3) of the 1954 Internal Revenue Code, and the quoted regulation is 'substantially the same as Treasury Regulation section 1.641(b)-3.

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On appellant's behalf it is argued that in order to terminate the estate and establish a trust as specified in the will, (1) a trustee's bond at an annual cost of \$1,160 would be necessary; (2) it would probably be necessary to appoint a bonded conservator to administer appellant's estate, because appellant is blind, aged and infirm; and (3) part of the estate's assets would have to be sold to cover specific bequests and costs of administration and such, a sale would be detrimental to the beneficiaries. It is also argued that the probate court has consented to the lengthy administration as evidenced by its acceptance and approval of each of the annual accountings which have been filed.

For income tax purposes, the period of administration of an estate may be considered terminated regardless of the date of formal distribution and final settlement in the probate court. (Chick v. Commissioner, 166 F.2d 337; Stewart v. Commissioner, 196 F.2d 397; Marin Caratan, 14 T.C. 934; Sidney N. LeFie11, 19 T.C. 1162.) Thus, the continuance of proceedings in the probate court is irrelevant, at least in the absence of evidence that an issue as to whether the estate should have been closed was raised, contested and determined by the court. (Sidney N. LeFie11, supra.)

Assuming that bonds would be required if the estate were terminated and that there would be some detriment in paying bequests, these are consequences which must be accepted in carrying out the decedent's will. The record before us indicates only that the executors found it convenient and economical to continue the administration of the estate indefinitely. The administration of an estate is concerned primarily with the collection of assets and payment of claims, and not with the more or less permanent custody of property for the protection of a beneficiary. (Alma Williams, 16 T.C. 893, 904.)

There is no evidence from which we could justifiably conclude that under regulation 17731(g) a "reasonable period for the performance by the executor of all the duties of administration" extended beyond 1957. Consequently, we agree with respondent's determination that the Alfred Hansen estate had terminated for income tax purposes at the end of that year.

