

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
SAMUEL AND DOROTHY V. PEARSON }

Appearances:

For Appellants: William N. Greene,
Attorney at Law

For Respondent: Israel Rogers,
Associate Tax 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 Samuel and Dorothy V. Pearson against proposed assessments of additional personal income tax in the amounts of \$120.28, \$192.02, \$361.25 and \$440.11 for the years 1958, 1959, 1960 and 1961, respectively,

Appellant Samuel Pearson is one of fourteen income beneficiaries of a trust created by the will of his grandfather, John Ena, who died in 1906 as a resident of Hawaii. Under the terms of his will, Mr. Ena left his entire estate in trust to Father H. Valentin and the Hawaiian Trust Company, Limited, a Hawaiian corporation with offices in Honolulu. During the years on appeal the Hawaiian Trust Company, Limited, was the sole trustee and it had control of the trust property which consists of real property located in Hawaii and intangible personal property, the physical evidences of which are also located in Hawaii,

Pertinent portions of the trust instrument provide:

I grant unto my said trustees ... full power to sell, with consent of my wife and

Appeal of Samuel and Dorothy V. Pearson

such of my children as may be of age at the time of sale,... any of my real or personal estate and to *invest and* reinvest the same in such manner as they may think for the best interests of my estate,,,,

* * *

I direct that my sons, Thomas F. Ena and John Ena, Junior, ... must not lead lives of idleness unless unavoidably incapacitated, I further *direct* that the disobedience of my sons to this, my wish and command, as to which the Trustees of my estate shall be judges, shall operate as a complete and final forfeiture of their aforesaid shares in the income of my estate,,,,

Appellant received distributions of income from the trust on which he paid income tax to Hawaii and claimed credits for the tax so paid on his California personal income tax *returns*, pursuant to section 18001 of the Revenue and Taxation Code. The instant assessments *result* from the Franchise Tax Board's disallowance of those credits,

While conceding that a credit is allowable to the extent of any tax paid on income derived from real property located in Hawaii, respondent argues that no credit is permissible for that portion of the Hawaiian tax which was attributable to income derived from *intangible* personal property. It contends that such income fails to meet the requirements of section 18001 in that it was not derived from sources in Hawaii,

In the Appeal of Estate of Douglas C. Alexander, etc., decided this day by us, we held that trust income arising from intangibles which were in the possession and control of a trustee residing in Hawaii, under a trust which imposed active duties and granted powers of management to the trustee, was income derived from sources in Hawaii. It is respondent's position, however, that the facts of the present case differ from those of the Alexander appeal. It contends that the trust created by the will of John Ena is a passive or dry trust because "the trustee must obtain the consent of certain beneficiaries before any sale or reinvestment of the trust property can be made" and that it is therefore controlled by the California Supreme Court's decision in Robinson v. McColgan, 17 Cal. 2d 423 [110 P.2d 426].

The term "dry trust" refers to a trust wherein the trustee has no actual responsibilities and no active duties to

Appeal of Samuel and Dorothy V. Pearson

perform. (Estate of Shaw, 198 Cal, 352 [246 P.48]; Gray v. Union Trust Co., 171 Cal, 637 [154 P. 306].) The beneficiary is entitled to actual possession and enjoyment of the property, and to dispose of it, or to call upon the trustee to execute such conveyance of the legal estate as he directs, (Ringrose v. Gleadall, 17 Cal, App. 664 [121 P. 407].) These definitions closely parallel the trust described in Robinson v. McColgan, supra, 17 Cal, 2d 423 [110 P.2d 426], wherein the court stated:

The stock certificates ...were simply held by the Bank of America in a living trust in San Francisco for the sole purpose of receiving the dividends thereon and forwarding the same to plaintiff, This trust had no fixed situs in California, but could be removed from the state at any time by the plaintiff, the trustor, without any previous consent of the trustee bank, The latter had no duties under this trust other than as custodian of these certificates of stock to send the income from the trust to the plaintiff, the trustor. The only asset of this trust was the aforementioned stock, and the trustee bank had no power to sell, invest or reinvest the trust corpus or property, nor had it any active "duties of trust management.

Describing this as a "naked" trust, the court found that the situs of the stock held by the trustee bank, and thus the source of the dividends thereon, was at the residence of the plaintiff, who was both trustor and beneficiary.

In the present case, it is by no means clear that the trustee's power to invest and reinvest the trust property was subject to the consent of the beneficiaries, In any case, it, cannot be said that this limitation completely stripped the trustee of all powers and duties of trust management, For example, the trustee was charged with the duty of determining whether John Ena's sons were leading-"lives of Idleness" which would have resulted in the forfeiture of their income interests, Neither can it be said that appellant or any of the other beneficiaries had unfettered power to remove the Ena trust from Hawaii or that they could call upon the trustee to execute such conveyance of the legal estate in the trust property as they -should direct, In short, the Ena trust cannot be classified as a dry or passive trust,.

We conclude that the facts in the present case do not materially differ from those of the Appeal of Estate of Douglas C. Alexander, etc., decided this day by us. For the

Appeal of Samuel and Dorothy V. Pearson

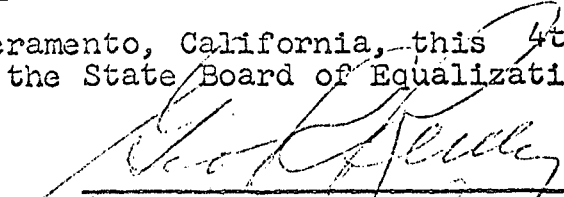
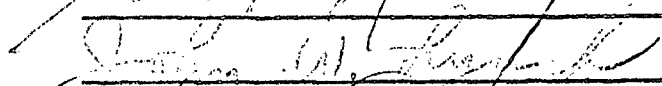
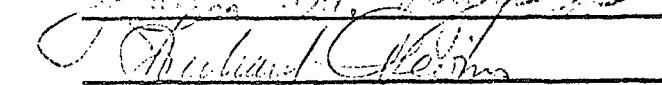

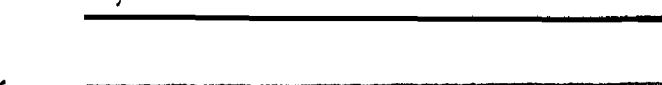
reasons stated in that appeal, we find that the income appellant received from the Ena trust had sources in Hawaii and that appellant is entitled to credit, under section 18001, for the Hawaiian tax paid. on that income.

O R D E R

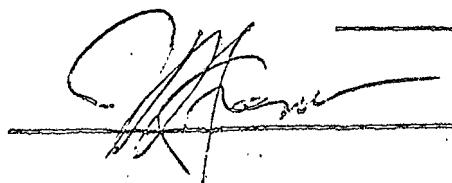
Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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 Samuel and Dorothy V. Pearson against proposed assessments of additional personal income tax in the amounts of \$120.28, \$192.02, \$361.25 and \$440.11 for the years 1958, 1959, 1960 and 1961, respectively, be and the same is hereby reversed.

Done at Sacramento, California, this 4th day of January, 1966, by the State Board of Equalization.

 Chairman
 Member
 Member
 Member
 Member

Attest:

 Secretary