

Appeal of Glen S. Hayden

In August 1976, appellant **created** the Glen S. Hayden Equity Trust (hereinafter referred to as "the Trust") and appointed David M. Wagers and Kenneth A. Wheeler as trustees; the relationship of the appointed trustees to appellant is unknown but David M. Wagers is shown as a dependent on appellant's 1977 California personal income tax return. Sometime subsequent to the creation of the purported Trust; appellant was also appointed as a trustee. On August 4, 1976, appellant and Kenneth A. Wheeler, as trustees for the Trust, entered into a partnership agreement for the purpose of managing the Trust property. Despite the establishment of this partnership, there is no indication in the record that it ever functioned for the purpose for which it was purportedly formed.

The Trust provides that its res is to consist of real and personal property conveyed by appellant to the Trust as well as "the exclusive use of his lifetime services and all of his earned remuneration accruing therefrom." The Trust neither identifies any beneficiaries, nor does it designate the respective interest of any such beneficiary in the Trust income or **res**.

On his California personal income tax return for 1977, appellant reported income other than wages, dividends, and interest in the total amount of \$18,623.46. That income was allegedly derived from the following sources: \$12,575.00 miscellaneous income from the United Church of Religious Science, \$548.46 income from the Trust, and \$5,500.00 in "consulting fees" from the Trust. From the \$18,623.46 he reported as income, appellant deducted \$12,575.00 as "[p]ayments of nominee income to Glen S. Hayden Equity Trust;" the Trust, in turn, reported that amount as nominee income.

In December 1978, respondent requested that appellant provide certain specific information with respect to the Trust for the purpose of determining its ownership. When appellant failed to respond to this request, he was subsequently sent a formal demand for the same information. Appellant responded to this demand by providing respondent with a copy of the Declaration of Trust and the previously described partnership agreement.

On the basis of the information available, respondent determined that: (i) appellant was not entitled to deduct \$12,575.00 as "nominee" income to the Trust from his personal income; (ii) \$1,450.63

Appeal of Glen S. Hayden

earned by the Trust in 1977 from rents and royalties was attributable to appellant; and (iii) there was no basis to attribute to appellant \$6,048.46 in income he purportedly received from the Trust in 1977. These adjustments to appellant's 1977 income resulted in an additional tax liability of \$49'7.30. Additionally, respondent imposed a five percent negligence penalty and a twenty-five percent penalty for failure to provide information pertaining to the Trust after demands for the same were made.

In February 1980, appellant filed a claim for refund of California personal income tax paid for the year 1978. In his claim, appellant stated:

. . . I have earned no lawful money and owe no taxes. I hereby demand a complete refund of my Federal Reserve Notes, which are not Constitutionally lawful money, but are a confiscation of buying power which have been illegally taken from me. ...

After consideration of appellant's arguments, respondent denied his claim for refund.

The Trust

Appellant argues that after the conveyance to the Trust of his lifetime services and all of his earned remuneration accruing therefrom, his income was properly paid to the Trust and was not **includible** in his gross income. Respondent, on the other hand, contends that the purported assignment of appellant's income to the Trust amounted to an anticipatory assignment of income which is not effective for tax purposes. While the position advanced by respondent was recently approved of by this board in Appeal of Kenneth L. and Lucille G. Young, decided **February 2, 1981**, our conclusion that the Trust is void under California law eliminates the necessity of discussing the specific arguments raised by the parties as to this issue.

Whenever the language of a purported trust instrument is so vague, general, or equivocal that any of the essential elements of a trust are left to real uncertainty, a trust is not established. (Lefrooth v. Prentice, 202 Cal. 215 [259 P. 947] (1927).) Reasonable certainty of subject, purpose, and beneficiary, the trustor's intention to create a trust, and the trustee's acceptance or acknowledgment are 'statutorily required.

Appeal of Glen S. Hayden

(Civil Code, §§ 2221 and 2222.) The nature and quantity of the interests the beneficiaries are to have and the manner in which a trust is to be performed have also been held to be included in the requirement of certainty. (Security-First Nat. Bank v. Rogers, 51 Cal.2d 24 [330 P.2d 811] (1958); Burling v. Newlands, 112 Cal. 476 (44 P. 810) (1896); Lefrooth v. Prentice, supra.)

A trust cannot be created unless there is property to be held in trust, i.e., the trustor must set aside some specific real or personal property to be held in trust. (Gonsalves v. Hodgson, 38 Cal.2d 91 [237 P.2d 656] (1951); Lesh v. Lesh, 8 Cal.App.3d 883 [87 Cal. Rptr. 632] (1970); In re Lamb, 61 Cal.App. 321 [215 P. 109] (1923)) Such property, in this sense, means interests that may be the subject of a present transfer, by way of outright gift, devise, bequest, or sale; one's knowledge, skill, or labor is not property that can be held in trust because the trust res must be in existence when the trust is created. (Gonsalves v. Hodgson, supra; Balian v. Balian's Market, 48 Cal.App.2d 150 [119 P.2d 426] (1941).-) Accordingly, a trust consisting solely of future earnings and acquisitions of family members creates no trust since there is no res presently in existence. (Balian v. Balian's Market, supra,)

In view of the above, we must conclude that the Trust is void for the following reasons: (i) in contravention of Civil Code section 2221, it does not identify the beneficiary or beneficiaries; and (ii) the quantity of the interest that any such beneficiary is to hold cannot be identified. Moreover, the Trust is void to the extent that it consists of property that cannot be held in trust, i.e., appellant's future earnings.

When a trust is void for any reason, either the trustee takes no estate or there is a resulting trust of the grantor or his heirs. (Wittfield v. Forster, 124 Cal. 418 [57 P. 219] (1899).) For purposes of this appeal, we are not required to determine which of these two alternatives results; in either case, the income reported by the Trust was properly includible in appellant's gross income.

Negligence Penalty and Penalty for Failure to Provide Information

Section 18684 of the Revenue and Taxation Code provides for the assessment of a five percent penalty

Appeal of Glen S. Hayden

when "any part of any deficiency is due to negligence;" the burden is on the taxpayer to prove that a negligence penalty has been improperly assessed. (Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) Since appellant has failed to present any evidence or argument in opposition to the negligence penalty assessed for the year 1977, we must conclude that he has failed to sustain his burden of proving that respondent's action in assessing the negligence penalty was improper.

As previously noted, respondent twice requested certain specific information with respect to the Trust. Rather than substantively responding to respondent's requests, appellant merely submitted a copy of the Declaration of Trust and the aforementioned partnership agreement. It is well established that the burden is on the taxpayer to prove that a penalty for failure to provide information, imposed pursuant to section 18683, has been improperly assessed. (Appeal of John L. Sullivan, Cal. St. Bd. of Equal., Jan. 8, 1980; Appeal of Thomas T. Crittenden, Cal. St. Bd. of Equal., Oct. 7, 1974.) For the same reason for which we sustained the negligence penalty, we must also uphold respondent's action in assessing the penalty for failure to provide information.

Appellant's Claim for Refund for 1978

Appellant's claim for refund is based on his argument that the California personal income tax which he paid for the year under discussion was paid in Federal Reserve notes which are not constitutional dollars. The argument presented by appellant is substantially similar to that discussed in numerous prior cases before this board. (See, e.g., Appeal of Ronald W. Matheson, Cal. St. Bd. of Equal., Feb. 6, 1980; Appeal of Marvin L. and Betty J. Robey, Cal. St. Bd. of Equal., Jan. 9, 1979; Appeal of Arthur W. Keech, Cal. St. Bd. of Equal., July 26, 1977.) In each of those cases, we found the taxpayers' contentions to be totally without merit; there is no reason to reach a different conclusion here.

Appeal of Glen S. Hayden

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 protest of Glen S. Hayden against a proposed assessment of additional personal income tax and penalties in the total amount of \$646.50 for the year 1977, and pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Glen S. Hayden for refund of personal income tax in the amount of \$528.55 for the year 1978, be and the same are hereby sustained.

Done at Sacramento, California, this 3rd day of March , 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Reilly, Mr. Dronenburg, Mr. Nevins and Mr. Cory present.

William M. Bennett , Chairman
George R. Reilly , Member
Ernest J. Dronenburg, Jr. , Member
Richard Nevins , Member
Kenneth Cory , Member