



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of )  
CHARLES E. AND JEANNETTE A. ALASKA )

For Appellant: Charles E. and  
Jeannette A. Alaska,  
in pro. per.

For Respondent: Allen R. Wildermuth  
Counsel

O P I N I O N

These appeals are made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Charles E. and Jeannette A. Alaska against proposed assessments of additional personal income tax and penalties in the total amounts of \$1,042.72, \$740.58 and \$4,832.68 for the years 1977, 1978, and 1979, respectively.

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The major issues presented by these appeals are:  
(1) whether appellant husband's purported conveyance of his services to a family trust was sufficient to shift the incidence of taxation from appellants to the trust, and  
(2) whether appellants have established any error in respondent's 1977 proposed assessment which was based upon a federal audit.

In February 1977, Charles E. Alaska (appellant) created the "Charles E. Alaska Trust" (the trust) and appointed his wife Jeannette Alaska and Robert C. Alaska to serve as trustees. The relationship between Robert Alaska and appellant is not known. The Declaration of Trust executed by appellant does not specify what property was to be transferred to the trustees. However, appellant contends that he and the trustees entered into various employment agreements which gave the trust the right to receive some or all of **appellant's** future wages. The details of these agreements are not known because appellant has failed to provide copies of the documents to this board. The Declaration of Trust does not identify any beneficiaries and does not indicate what interest in the trust property or income any beneficiary is to receive.

Appellants filed joint California personal income tax returns, and the trust filed fiduciary income tax returns for the years on appeal. The bulk of appellants' income for each year was reported on the trust's return, and deductions were claimed in each year which resulted in the trust having no taxable income. **Many** of the claimed deductions were apparently for appellants' personal living expenses.

Respondent determined that the **trust was** invalid for tax purposes and that appellants were taxable on the income reported by the trust. It adjusted appellants' taxable income accordingly and disallowed the deductions it found to be for appellants' personal expenses or to be otherwise not deductible. Proposed assessments were issued for 1977, 1978, and 1979. A second proposed assessment for 1977 was issued based upon a federal **audit** report indicating that appellants had partnership and interest income in 1977 which had not been reported on either appellants' or the trust's return. Respondent imposed a 5 percent negligence penalty with respect to each proposed assessment. In addition, it imposed a 25 percent penalty for failure to furnish information with respect to the first -1977 proposed assessment. **After** considering appellants' protests, respondent affirmed

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each proposed assessment. Appellants filed timely appeals which were consolidated for decision by this board. Respondent concedes that in 1977 appellants had some state income tax withheld from their wages and made **estimated** payments for which they were not given proper credit. Respondent has agreed to adjust the 1977 proposed assessment to correct this oversight.

Appellant contends that once he entered into employment contracts with the trust, he was obligated to pay all or a part of his income to the trust, thereby shifting to the trust the obligation to pay tax on that income. Respondent contends that the arrangement resulted in an anticipatory assignment of income which is ineffective for tax purposes. There is ample legal support for respondent's position. (See Kenneth L. and Lucille G. Young, Cal. St. Bd. of Equal., Feb., 1981 and the cases cited therein.) However, we **need** not reach that issue because we conclude that the trust is void under California law.

In the Appeal of Glen S. Hayden, decided on March 3, 1982, we summarized the **California** law relating to the creation of a valid trust as follows:

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. [Citation.] Reasonable certainty of subject, purpose, and beneficiary, the trustor's intention to create a trust, and the trustee's acceptance or acknowledgement are statutorily required. [Citation.] 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. [Citations.]

We also noted, in that appeal, that only specific real or personal property can be held in trust and that future earnings and acquisitions cannot be transferred to a trust.

The trust appellant created is invalid since it lacks essential elements of a trust. The beneficiaries are not identified, and the nature or quantity of any beneficiary's interest is not defined. Furthermore, the trust is void to the extent that appellant's future earnings were intended to be held in trust.

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The result of a void trust is either that the trustee takes no estate or holds the property for the benefit of the grantor. (Wittfield v. Forster, 124 Cal. 418 [57 P. 219] (1899).) Whichever occurred in this appeal, the income reported by the trust was properly included in appellants' gross income.

Appellants contend that respondent incorrectly decided which deductions claimed on the trust's return were deductible by appellants. However, no evidence has been presented establishing precisely how respondent erred. The burden of proof is, of course, on appellants (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980), and since they have not met this burden, we must conclude that respondent correctly decided which deductions were allowable.

Appellants also contend that the negligence penalty **should not** have been imposed against them. The burden is on the taxpayer to prove that a penalty has been improperly imposed. (Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) **Since appellants** have presented no evidence in support of their contention, we must conclude that such penalties were correctly imposed.

The second 1977 proposed assessment was based on a federal audit which determined that in 1977 appellants had received unreported income. Respondent's assessments based on a federal audit are presumed correct, and the taxpayer must either concede its correctness or show where it is incorrect. (Rev. & Tax. Code, § 18451; Appeal of Herman D. and Russell Mae Jones, Cal. St. Bd. of Equal., April 10, 1979) **Rather than attempting** to show any error, **appellant merely** reiterates his argument concerning the validity of his family trust. Since appellant has not sustained his burden of proof, we must conclude that this proposed assessment is also correct.

For the above reasons, respondent's action, as modified by its agreement to allow a credit for withholding and estimated tax payments made in **1977**, must be sustained.

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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 Charles E. and Jeannette A. Alaska against proposed assessments of additional personal income tax and penalties in the total amounts of **\$1,042.72**, \$740.58 and **\$4,832.68** for the years 1977, **1978**, and 1979, respectively, as modified by its agreement to allow a credit with respect to 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 15th day Of September@ 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. **Dronenburg**, Mr. Nevins and Mr. Harvey present.

William M. Bennett , Chairman

Conway H. Collis , Member

Ernest J. Dronenburg, Jr. , Member

Richard Nevins , Member

Walter Harvey\* , Member

\*For Kenneth Cory, per Government Code section 7.9