

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
FOLKE JERNBERG, et al.) No. 82A-975-VN

For Appellants: Per Jernberg

For Respondent: Elleene K. Tessier
Counsel

O P I N I O N

These appeals are made pursuant to section. 18593^{1/} of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Folke Jernberg, Gund Hiller, Erik Jernberg Gunnar, and Ann Brit Hallstrom against a proposed assessment of additional personal income tax and penalties in the total amount of \$15,034.44 against each of them, individually, for the year 1980.

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the year in issue.

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The common issue presented for our decision is whether respondent properly determined that appellants were taxable on certain distributions received in 1980 from the estate of their brother.

Prior to their deaths, the four appellants, two brothers and two sisters, had been residents of Sweden, however, their brother, Gus Jernberg, was a California resident with real estate holdings in Los Angeles County. In 1972, Gus Jernberg died testate, leaving the bulk of his estate to appellants, who were his only heirs. Under the terms of the decedent's will executed in 1970, it was provided that the residue of this estate was to be divided equally among appellants. Due to an unexplained delay, final distribution from the estate did not occur until 1980 after two properties in Woodland Hills were finally sold at a combined capital gain of \$535,073. This gain was then equally distributed to appellants as part of the residue of decedent's estate and reported on the final return of the estate which was filed in 1981. The final return also indicated that \$37,945 in accumulated income of the estate was distributed to appellants in 1980 as part of the estate's residue.

Upon review, the Franchise Tax Board determined that none of the four appellants had filed a 1980 non-resident return reporting his or her pro rata share of the distributions. Consequently, respondent issued appellants proposed assessments of additional tax; each of which reflected equal California tax liability based on the pro rata distribution of the capital gains and accumulated income of the Gus Jernberg estate. In addition, respondent imposed against each appellant a 25-percent penalty under section 18684 for failure to file a timely return and a 25-percent penalty under section 18683 for failure to file after notice and demand. Following the denial of their protests against the deficiency assessments, these appeals were filed with this board in 1982. The last surviving appellant and beneficiary, Folke Jernberg, died in Sweden in 1984.

In these proceedings, appellants have contended that they owe no tax to this state for 1980 because the executor of their brother's estate was required to settle and pay all tax liabilities arising from the estate before any distribution to them as beneficiaries. In support of their position, they have argued that their brother's will provided that all estate taxes were to be paid from the residue of the estate and the court petition for the final accounting and distribution stated

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that all taxes due from the estate had been paid by 1980. Appellants have apparently misconstrued the nature of the deficiency assessments at issue here.

In general, a decedent's estate is treated as a separate taxable entity which is taxed on its own income. (Rev. & Tax. Code, § 17742). The taxable income of an estate includes income accumulated or held for future distribution under the terms of a will as well as income which is to be distributed to the beneficiaries. (Rev. & Tax. Code, § 17731, subd. (a).) If the decedent was a resident, the tax applies to the entire taxable income of the estate regardless of the residence of the beneficiary or fiduciary. (Rev. & Tax. Code, § 17742.) The fiduciary of the estate, namely the executor or administrator, is required to file the estate's return and pay it.; tax. (Rev. & Tax. Code, § 17711, subd. (b).) In computing the taxable income of the estate, however, a deduction may be claimed for amounts of income paid or required to be distributed to the beneficiaries which deduction cannot exceed distributable net income. (Rev. & Tax. Code, §§ 17761, subd. (a) and 17739.) On the other hand, upon receipt by the beneficiary, the income from an interest in an estate constitutes gross income to the recipient beneficiary. (Rev. & Tax. Code, § 17071, subd. (a) (15); Treas. Reg. § 1.61-13(a).) Specifically, income of the estate which is paid or required to be distributed to a beneficiary for the year is to be included in his gross income. (Rev. & Tax. Code, § 17762, subd. (a).) In the case of a nonresident beneficiary, because the California personal income tax is to be imposed on the income of nonresidents which is derived from sources within California (Rev. & Tax. Code, § 77041, subd. (a)), income from an estate is taxable only to the extent that it is likewise derived from sources within this state. (Rev. & Tax. Code, § 17762, subd. (c).) Income from real property or gain from the sale or transfer of real property has its source or situs where the realty is located. (Appeal of Estate of Albert Kahn (Dec'd) and Lillian Kahn, Cal. St. Bd. of Equal., Apr. 9, 1986; Appeal of The Inn at La Jolla, Inc., Cal. St. Bd. of Equal., Dec. 18, 1964.)

It is well settled that determinations of the Franchise Tax Board with regard to the imposition of taxes and penalties, other than the fraud penalty, are presumptively correct and the taxpayer has the burden of showing error in those determinations. (Appeal of R. L. Durham, Cal. St. Bd. of Equal., Mar, 4, 1980; Appeal of Myron E. and Alice Z. Gire Cal. St. Bd. of Equal.,

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Sept. 10, 1969.) Here, respondent properly determined that appellants, though nonresidents, were nevertheless liable for taxes in 1980 or their pro rata share of the \$535,073 distribution from their brother's estate because said income was derived from the sale of decedent's California real estate. Appellants have not shown that this determination was improper. While appellants may have misunderstood that the executor was required to pay only the taxes owed by the estate and not the personal income tax of the beneficiaries, this does not absolve them of their liability for payment of the deficiency assessments in question. Moreover, since appellants have not questioned the propriety of the assessments in any other regard nor offered any argument or evidence against the penalties, we have no choice but to find that the distribution of the \$31,975 in accumulated income was likewise taxable to appellants and the penalties were properly imposed.

For the foregoing reasons, we find that appellants have not carried their burden of proving the assessments to have been erroneous. Accordingly, respondent's action in these matters 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 Folke Jernberg, Gund Biller, Erik Jernberg Gunnar, and Ann Brit Hallstrom against a proposed assessment of additional personal income tax and penalties in the total amount of \$15,034.44 against each of them, individually, for the year 1980, be and the same is hereby sustained.

Done at Sacramento, California, this 19th day Of November , 1986, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Collis, Mr. Bennett, Mr. Dronenburg and Mr. Harvey present.

Richard Nevins , Chairman
Conway H. Collis , Member
William M. Bennett , Member
Ernest J. Dronenburg, Jr. , Member
Walter Harvey* , Member

*For Kenneth Cory, per Government Code section 7.9