

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 056

June 27, 1958

ESTATES AND TRUSTS: CHARITABLE DEDUCTION

Syllabus:

Where the facts indicate a charitable bequest of the residue of an estate is valid under Sec. 41 of the Probate Code, a deduction of income is allowable under section 17734 of the Personal Income Tax Law.

The decedent, by a residual bequest in a will executed five years before her death, left the greater portion of her estate in trust for charitable purposes. She was survived by her husband and four sisters. These heirs at law took the position that the charitable bequest was invalid to the extent that it exceeded one-third of the estate because of the restriction in Section 41 of the Probate Code. However, no formal action was taken to enforce this claim against the will. The husband died three months after the testatrix. Thereafter, in 1951, the executors entered into a compromise agreement with the four sisters and the husband's executors whereby the latter agreed not to contest the will in consideration of an amount paid to them.

The decedent's executors reported the income of the estate for 1948, 1949 and 1950 on the assumption that the charitable bequest was invalid to the extent that it exceeded one-third of the estate. They have now filed claims for refund alleging that said bequest was valid in its entirety and all income applied thereto is deductible.

Advice is requested as to whether the charitable bequest is valid in its entirety, thus entitling the estate to deduct all its income.

The case of Estate of Bunn, 33 C2d 897 and 100 CA2d 228, parallel to the instant case in all material respects is conclusive authority for the validity of this charitable bequest in its entirety. In the Bunn case, just as in the instant case, the will was executed more than six months before death of the testatrix, and a husband and collateral heirs survived, the husband dying shortly thereafter. By a strict construction of the statute, Section 43 would not apply because the husband survived and did not waive the restriction. Therefore, it would seem that Section 41 would apply and that the collateral heirs, being within the class named in that section, could claim against the will. However, the court interpreted Section 43 to be operative in this situation, so that the husband was the only one who could attack the will, he being the only survivor within the class protected by Section 43. The court held further that this right of the husband was a personal right which

did not pass to his representative upon his death, the final result being that the charitable bequest was no longer subject to attack by anyone.

The same result must be reached in the instant case. The validity of the bequest being beyond attack, there can be no doubt about the deductibility of the income of the estate under Personal Income Tax section 17734. The charitable bequest being of the entire residue of the estate, after certain specific bequests are paid, it is clear that all income of the estate falls into the residue and is to be applied to the charitable purposes.