

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 033

June 25, 1958

TRUSTS: SINGLE OR MULTIPLE

Syllabus:

Upon the facts a single trust requiring a single fiduciary return was created.

In 1933, a transferred property to himself as trustee for the benefit of his two children. The trust provided that upon the marriage of either child, "the trustee shall divide the entire corpus of the trust estate into two equal shares and pay the net income from one of said shares" to the married child. When the other child married he was to receive the income of the other share. Both children married prior to 1946. Separate investment accounts have been maintained for each child. For each year through 1948 a single fiduciary return was filed for a single trust. In 1949 and 1950 returns were filed for two separate trusts. Advice is requested as to whether one or two trusts was created.

It is settled, that, where the intention to do so is clear, a single trust instrument may create multiple separate and distinct trusts, the income of which are taxable separately. In determining whether one or more trusts have been created the controlling factor is the intention of the grantor when he makes the declaration of trust.

Use of a singular or plural terminology in the trust instrument has often been looked upon as evidence of intention to create single or multiple trusts. In the instant case, the plural "trusts" appears twice in the instrument, the singular "trust" appears 27 times and the singular "trust estate" appears 28 times. The great preponderance of singular terms would indicate an intention to create a single trust. Furthermore, there are frequent references to "share" or "shares" and these words are consistent only with the idea of a whole -- an integrated trust. If the instrument in the instant case is ambiguous, the best additional evidence of the intention of A, who is both grantor and trustee, would be the manner in which he made his fiduciary return, to wit, as for a single trust for all years through 1948. This indicates that his original intention was to create a single trust and that the desirability from a tax standpoint of treating the instrument as creating two trusts came as an after thought many years later. Therefore, the declaration of trust should be treated as creating a single trust, requiring a single fiduciary return.