

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 293

April 23, 1965

DEDUCTIONS: TRUST TERMINATION COMMISSIONS

Syllabus:

The taxpayer, a resident since 1958, was the remainderman of a New York trust. After the death of his mother, the lifetime income beneficiary, the assets of the trust were distributed to taxpayer's guardian in 1958 and final distribution of cash on hand was made in 1958.

Taxpayer filed a resident return for 1958 reporting the income which accrued after May 1958. Although adjusted gross income was reflected therein, excess deductions in connection with the termination of the trust were claimed. Prior to 1958, the trust was not subject to California tax.

Are the trust termination commissions deductible in full by the beneficiary or are they subject to proration?

Section 17737 of the Revenue and Taxation Code provides in part: "If on the termination of an estate or trust, the estate or trust has . . . for the last taxable year of the estate or trust deductions . . . in excess of gross income for such year then such . . . excess shall be allowed as a deduction in accordance with regulations prescribed by the Franchise Tax Board, to the beneficiaries succeeding to the property of the estate or trust." Reg. 17737(a) gives the following example of how the section is to be interpreted: "Assume that a trust distributes all of its assets to B and terminates on December 31, 1955. As of that date it had excess deductions, for example, because of corpus commissions on termination of \$18,000. B, who reported on the calendar year basis, could claim the \$18,000 as a deduction for the taxable year 1955.

Application of this example to the instant case demonstrates the propriety of the manner in which taxpayer reported his income and his deductions. The principal terminating commissions paid on December 29, 1958, pursuant to a Court decree entered into on December 22, 1958 are awarded to the trustees in the final accounting. Despite the large amount of the commissions, they are not allocable over any period prior to their accrual, namely the date the decree approving the trustee's final accounting was entered and filed. In New York the compensation of the trustee is the subject of a special statute which fixes the commissions due upon the settlement of the account. (Surrogate's Court Act N.Y. Section 285-a). The compensation is based on a percentage of the amount of principal paid out by the trustee upon the trust's termination, and is similar

to the compensation scale established for executors by Section 901 of the California Probate Code. Since the amount of the commissions to be paid is unknown prior to the termination of the trust, there can be no apportionment of said commissions over the life of the trust.

WILLIAMS & BRANNEN