

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 304

April 23, 1965

TRUSTS: DEVIATION FROM TRUST RESTRICTIONS

Syllabus:

Taxpayers were the grantors of a trust executed December 3, 1957, for the benefit of a minor son. The trust instrument provided that the trustee, in his absolute and uncontrolled discretion, from time to time may expand and apply for the benefit of the beneficiary such money out of net income as he deems necessary or reasonable to provide for the beneficiary's maintenance and education. Further provision is made for principal distributions at specified ages beginning with age 25.

The trust return shows distribution to the beneficiary in 1961 and in 1962. The beneficiary has filed returns and paid tax on the distributions. The distributed amounts were added to the grantors income and notices of proposed assessment issued. They were withdrawn when information furnished disclosed that none of the income was used for maintenance and education. The distributed income was deposited in a guardianship account with a savings and loan association for the son.

Should the trust be denied a deduction for the distribution not made in accordance with the provisions of the trust instrument?

A trustee is a general agent for the trust property. His authority is such as is conferred upon him by the declaration of trust and by Chapter 2, Article 3 of the Civil Code and none other.

The court may empower the trustee to deviate from the terms of the trust instrument in an unforeseen contingency arising from changed conditions where this is necessary to save the estate from serious loss or destruction. Where, owing to events not known or foreseen by the grantors and so not provided for by them, the conferring of the power on the court is essential to avoid the frustration of the ultimate purpose of the trust.

Equally well established is the rule that changes will not be permitted either in contravention of the trust instrument or in the absence of a provision in it when the only result would be to gain for the beneficiary, slight advantages or to remake the trust into an instrument which is more provident than the grantors' scheme.

In the absence of express authority in the trust instrument to deviate from

its restrictions, in the absence of a court order empowering the trustee to deviate from the trust provisions and in the absence of a justifiable cause for deviation by the trustee, the distributions in 1961 and 1962 appear to be in contravention of the trust provisions and not deductible by the trust.

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