



California Tax Reform Association
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County and Municipal Employees

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Public Employees Union Local 1

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To: The Honorable Members of the Board of Equalization

August 25, 2016

RE: Paula Trust Tax Appeal Hearing

We are writing to express strong support for the position of the Franchise Tax Board in the case of Paula Trust, set for rehearing next week. The BOE got it right the first time: there is no basis for excluding California source income from taxation, which would contradict law and practice for at least the past 80 years.

Should the BOE find for the appellant, the doors will be wide open for abuse of California law, and tax attorneys will have a new mechanism for tax avoidance which will be used widely. Not only are 171 trust cases waiting on this appeal, but there will be thousands more which will be able to use a new loophole opened by the BOE, generating major revenue loss to the state based on a complete misinterpretation of statute, regulation, and history.

The BOE would have to overturn 80 years of settled law and practice with regard to the taxation of trusts should it rule for the appellant. California source income, as provided in this case, has always been taxed, whether to a resident or non-resident. This case seeks to overturn this fundamental part of California tax law with specious arguments relative to a law change in 1937. As the BOE staff notes in its summary (pgs 39-40), if the interpretation of the FTB was wrong in 1938, then the legislature or courts at some point would have intervened. Instead, as the BOE notes in a footnote:

To the best of staff's knowledge after extensive research, prior to this appeal and the related appeals filed by appellant's counsel, there have been no cases, appeals, or articles that have questioned the validity of the FTB's position that all California source income of trusts is subject to tax without apportionment based on the residence of fiduciaries or beneficiaries.

Thus this appeal is nothing but an attempt to concoct a wholly new tax avoidance scheme, based on interpretations which somehow argue, in contradiction to federal law and state law, that income to a trust should be treated differently than it has been historically. To the contrary, the history

of sound tax policy is that income should be treated equally, unless there are explicit exceptions made.

The arguments of the FTB are sound. What we question is why the Board of Equalization, which already ruled on this correctly based on law, precedent and practice, would consider such a drastic change which is so contrary to California's interest and provides extensive benefits to those who can arrange their trusts with out-of-state fiduciaries. There is nothing behind this effort other than an attempt to find a new way to avoid California taxes by tax attorneys, and we urge your reaffirmation of the FTB position. Please do not hesitate to contact our legislative representative Samantha Corbin at 916-862-0941 with any questions about this position.

Sincerely,

Lenny Goldberg, California Tax Reform Association

Dave Low, CSEA

Estelle Lemieux, CTA

Terry Brennand, SEIU

Roy Ulrich, Goldman School of Public Policy, University of California, Berkeley

Craig Cheslog, Common Sense Kids Action