

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21320
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

[Redacted], a trust, (petitioner) protests the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated June 27, 2008. The Notice of Deficiency Determination asserted additional Idaho income tax and interest in the total amount of \$5,430 for 2005.

The petitioner filed Idaho income tax returns as a resident trust. The auditor asserted this liability against the petitioner due to one or more of the beneficiaries of the trust not having filed Idaho income tax returns reporting their respective income from the trust.

The auditor cited Idaho Code § 63-3022L as authority for his position. This code section states, in pertinent part:

- Individuals who are officers, directors, shareholders, partners or members of a corporation or partnership or beneficiaries of a trust or estate. (1) Individuals who are officers, directors, shareholders, partners or members of a corporation or partnership transacting business in Idaho or who are beneficiaries of a trust or estate with income taxable in Idaho may elect to have Idaho tax relating to income described in subsection (2) of this section reported and paid by the corporation, partnership, trust or estate. Income subject to the election in this subsection shall be taxed at the rate applicable to corporations. The election shall be made on the return of the corporation, partnership, trust or estate from which the income is received. The election in this section is not available to an individual who has Idaho taxable income in addition to income described in subsection (2) of this section.
- (2) The election in subsection (1) of this section applies to:
 - (a) Wages, salary and other compensation paid by the corporation, partnership, trust or estate to such officers, directors, shareholders, partners, members or beneficiaries to the extent the

compensation is Idaho taxable income of the individual to whom it is paid; and

(b) The share of any income, loss, deduction or credit of an S corporation, partnership, trust or estate required to be included on such shareholder's, partner's, member's or beneficiary's Idaho return.

(c) When the gross income attributable to an individual under paragraphs (a) and (b) of this subsection (2) is less than the filing requirement of the individual under section 63 3030, Idaho Code, the income is not income under this subsection.

(3) If no election is made and an officer, director, shareholder, partner, member, or beneficiary of a corporation, partnership, trust or estate transacting business in Idaho fails to file an Idaho income tax return reporting all or any part of the items described in subsection (2) of this section or fails to pay any tax due thereon, such corporation, partnership, trust or estate shall be liable for tax on such items at the rate applicable to corporations.

(4) The provisions of this section shall not apply to a corporation, other than an S corporation, with less than fifty percent (50%) of its income taxable within this state. (Emphasis added.)

The auditor deemed the beneficiaries' income from the Idaho resident trust to be Idaho source income pursuant to Idaho Code § 63-3026A which states, in part:

Computing Idaho taxable income of part year or nonresident individuals, trusts and estates. (1) For nonresident individuals, trusts, or estates the term "Idaho taxable income" includes only those components of Idaho taxable income as computed for a resident which are derived from or related to sources within Idaho. This is to be computed without the deductions for either the standard deduction or itemized deductions or personal exemptions except as provided in subsection (4) of this section.

* * *

(3) For the purposes of subsections (1) and (2) of this section:

(a) Income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from:

(i) Any business, trade, profession or occupation conducted or carried on in this state, including the distributive share of partnership income and deductions, and the pro rata share of S corporation income and deductions;

(ii) The ownership or disposition of any interest in real or tangible personal property located in this state;

(iii) The ownership or disposition of any interest in intangible personal property only to the extent that such property is employed in a business, trade, profession or occupation conducted or carried on in this state. Provided however, that interest income from an installment sale of real or tangible personal property shall constitute income from sources within this state to the extent that the property sold was located within this state. Provided further, that interest income received by a partner or shareholder of a partnership or S corporation from such partnership or S corporation shall constitute income from sources within this state to the extent that the partnership or S corporation is transacting business within this state;

(iv) A resident estate or trust;

(v) A nonresident estate or trust to the extent the income and deductions of the nonresident estate or trust were derived from or related to sources within this state; (Emphasis added.)

The representative concedes that the income in question was in the gross income of the trust. However, she contends that the income was distributed to the beneficiaries. Therefore, the representative contends, the income is not attributable to or resulting from an Idaho resident trust and is not Idaho source income. In support of her position, the representative cited Legal Ruling No. 291¹ issued by the California Franchise Tax Board on April 23, 1965. This ruling stated, in part:

Similarly, where the intangibles are held in trust and trust income is distributed to the beneficiary, the source of such income is at the residence of the beneficiary. Robinson v. McColgan, 17 Cal. 2d 423 (1941).

In Robinson v. McColgan, *supra* at 425-426, the Supreme Court of California stated, in part:

In support of his contention that income from the dividends declared on the stock in question was properly the subject of this tax provision, appellant devotes practically all of his argument to a discussion of constitutional principles, with particular emphasis on

¹ It appears from the watermark on the document supplied by the petitioner that this ruling was withdrawn by the California Franchise Tax Board.

the *power* of California to tax a nonresident living outside of the United States on intangibles, the evidences of which are physically present within this state. In this connection appellant relies strongly on the [*Estate of McCreery*, \(1934\) 220 Cal. 26 \[29 Pac. \(2d\) 186\]](#), which followed the doctrine of [*Burnet v. Brooks*, \(1933\) 288 U. S. 378 \[53 Sup. Ct. 457, 77 L. Ed. 844, 86 A. L. R. 747\]](#), a federal estate tax case, which involved only the element of physical presence of securities within the United States and none of the elements of business situs. In the aforementioned California case this court upheld the *power* of the legislature to subject to the California inheritance tax stock in a California corporation belonging to a nonresident alien, represented by certificates physically present, but having no business situs in California at the time of decedent's death. The difficulty we find with this line of argument adopted by appellant is the fact it assumes, apparently without question, that the dividends declared on this nonresident's stock by a California corporation were "derived from sources within this state" within the meaning of the act. But in our opinion the determination of source of this income is the crux of the problem presented here for consideration, and it is, therefore, to the matter of statutory interpretation that we first turn our attention. It is only if this issue is decided against respondent that the principle of constitutionality becomes important to our decision in this case.

The significant words to be construed in section 5 quoted above are "income ... derived from sources within this state". In this connection we refer to this court's pertinent discussion of statutory interpretation in its decision rendered today, involving issues closely related to the instant case ([*Miller v. McColgan*, post, p. 432 \[110 Pac. \(2d\) 419\]](#)) wherein the rule of *mobilia sequuntur personam* was applied in holding that dividends declared by a Philippine corporation were *income from sources within California* because they were the product of intangible property (corporate stock) having a situs in California at the domicile of the owner, a resident of California. By analogy it appears to be indisputable that here the dividends, subject of a naked California trust, have their source in corporate stock whose situs is at the residence of respondent in Shanghai, China, so that the income sought to be taxed by appellant would not be included within the meaning of section 5 as we construe the legislative intention expressed therein. It is our conclusion that since the issue of statutory construction in favor of respondent is decisive of this case, we need not consider here the constitutional questions involved in multiple taxation of nonresidents having evidence of their ownership of intangible property within the taxing jurisdiction.

The decision was based upon, Robison v. McColgan, the statutory construction of the California statutes. It did not question the *power* of the state to tax the income in question. The petitioner has not shown either that the California statutes should control the determination in this matter or that there is any similar provision in the Idaho law. The determination in this matter must be determined by construing the Idaho law.

The Idaho law says that the income, “shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from . . . [a] resident estate or trust.” The income in question was reported to the beneficiary on a Form 1099 showing that it was from the petitioner, an Idaho resident trust. We find the law clearly requires this income to be considered to be from an Idaho source. We find nothing in the Idaho Code providing that this changes if the funds are distributed, and the petitioner only provided authority based upon the reading of the California statutes. We do not find this to be a compelling argument.

WHEREFORE, the Notice of Deficiency Determination dated June 27, 2008, is hereby APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pays the following tax and interest (computed to September 30, 2009):

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2005	\$4,686	\$1,032	\$5,718

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioner’s right to appeal this decision is enclosed.

DATED this _____ day of _____, 2009.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2009, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No.
