

RVL:n

45; C7364 (1)



Op. 58-123

TERRITORY OF HAWAII

DEPARTMENT OF THE ATTORNEY GENERAL
HONOLULU

July 7, 1958

Honorable Earl W. Fase
Tax Commissioner
Territory of Hawaii
Honolulu, Hawaii

Attention: Mr. James I. Nishikawa
Asst. Tax Commissioner

Dear Sir:

Reference is made to your request for an opinion as to the application of the Income Tax Law of 1957 where a trust is on the fiscal year basis and all others involved (the beneficiaries, grantor, etc. as the case may be) are on the calendar year basis. This question concerns the fiscal year of the trust which commenced in 1957 and ended in 1958, and the calendar year 1958 so far as the beneficiaries and others are concerned.

It is necessary to set up the categories of problems involved and treat them separately.

I. Trust under subpart E
of the Internal Revenue Code.

Where a grantor or other person is treated as the owner of a portion of a trust we do not have the situation in which there are involved taxpayers with different taxable years. As to the portion of the trust to which subpart E of the Internal Revenue Code applies there is only one taxpayer. The fiduciary does not include the income from this portion of the trust in its return. See section 1.671-4 of the regulations under the Internal Revenue code of 1954.

II. Trusts under subparts B and C
of the Internal Revenue Code.

We first will consider the situation of the beneficiaries. They report on the calendar year basis. For the calendar year 1958 they must, under sections 652(c) and 662(c) of the Internal Revenue Code, include their share of the net income of the trust for the fiscal year ending in 1958, that is, the fiscal year which began in 1957. So far as they are concerned is 1958 income to which the 1958 rates apply.

Let us suppose that the trust will file two returns for the fiscal year ending in 1958. May the beneficiaries in their return for the calendar year 1958 report their distributive shares as computed by the trust under the old law for the fractional part of the calendar year 1957 or must the beneficiaries recompute this under the new law? (Of course the beneficiaries' distributive shares will be computed under the new law as far as the fractional part of the calendar year 1958 is concerned.)

We have concluded that the income of the beneficiaries will be computed under the old law so far as the fractional part of the calendar year 1957 is concerned. This is true even though this is 1958 income of the beneficiaries subject to 1958 rates. The provisions as to trusts and beneficiaries are so integrated as to preclude any other result.

The trust will proceed the same as any other fiscal year taxpayer filing two returns under section 19(a). So far as the trust itself is taxable the 1957 rates apply to the fractional part of the calendar year 1957 separately returned pursuant to section 19(a), and for the 1957 portion of the fiscal year the computations of income and deductions are made under the old law. For the 1958 portion of the fiscal year the computations of income and deductions are made under the new law and so far as the trust itself is taxable the 1958 rates apply.

Respectfully,



RHODA V. LEWIS
Deputy Attorney General

APPROVED:



HERBERT Y. C. CHOY
Attorney General