

27:20

AFFIDAVIT OF DELINQUENCY

1956

78/177
C

6/28/56 : 247 PM.

Phil DeLay E 2-3377

& ref'd him WDRS

asked for statement - app. re
delinquent 1951-4 fed. returns.

Told him I was sure
I would be very active.
He says this as all I will do

1951 to 1954

AFFIDAVIT OF DELINQUENCY

I declare under the penalties of perjury that failure to file an income tax return, Forms 1041, on or before the due date, for the period _____, was not due to an intent to violate the law or avoid payment of the tax, but was due to:

I do not possess the time, inclination or aptitude for accounting work and practice and the preparation of income tax returns and, because of the press of my own law practice, I am forced by circumstances to rely for the preparation of my income tax returns upon the services of the firm of Long and James, Certified Public Accountants, 300 Montgomery Street, San Francisco, California. For many years my state and federal income tax returns have been prepared by said firm from my books and records. They are experts in their specialized field of accounting and taxation and I long have had confidence in said firm which enjoys an excellent reputation and long has rendered me satisfactory services.

The bank interest items for the calendar years 1951, 1952, 1953 and 1954 which were set forth in the fiduciary returns which your office received from me on April 16, 1956, accrued to the trustee litigation funds as set forth in the Statement annexed to each of said returns and incorporated therein.

No fiduciary returns were made by me to your office covering interest accrued on said trust funds for said calendar years because of my own ignorance that such fiduciary returns were required to be prepared and filed. Relying upon the opinion of the said firm of certified public accountants I was led to believe and believed that such returns were not required to be prepared and filed with the District Director of Internal Revenue because the origin and special nature of the funds upon which the annual bank interest accrued rendered the interest exempt from taxation.

From my own personal knowledge and recollection, as refreshed by my records and notes in my files made at the following times, I state the following:

In early January, 1952, I delivered my records to John F. Long of said accounting firm at his office for the purpose of having said firm prepare my individual income tax returns for the year 1951. Either at that time or subsequent thereto, prior to Jan. 15, 1952, before the said personal returns were delivered to me I inquired of him whether or not I was required to file a fiduciary return on the \$500.35 interest credited to Savings Account 792754 by the San Francisco Bank and was informed by him that inasmuch as the fund in reality was a combination of a series of trust funds for several thousand individual parties litigant each of whose contribution thereto was under \$300 and the annual interest thereon per plaintiff was trifling in amount that the same was exempt and did not require either a state or federal income fiduciary return to be filed.

In early January of 1953 I went to Mr. Long's office and delivered my records to him to prepare my personal returns for 1952. At that time I informed him that the interest on the trustee account for 1952 amounted to \$1773.50 and asked him if he was certain that I was not required to file state and federal returns thereon and whether it was taxable and he informed me that it was exempt and was neither reportable nor taxable. I have no recollection of again bringing up the subject or inquiring of him or of his partner Mr. James during the remainder of 1953, during 1954 or until November 1955.

Thereafter I received a letter from the Franchise Tax Board from Sacramento, California, dated November 15, 1955, informing me that the 1953 Information Return submitted by the San Francisco Bank showed payment in the sum of \$4,841.71 as interest on said trustee account and requesting me to complete the Form 540 or 541 which was enclosed if I had not made a fiduciary return thereon. Shortly after the receipt of that letter I telephoned Mr. Long and informed him thereof and he stated that no such return was required to be filed but that inasmuch as the Franchise Tax Board requested it that he would prepare the form for 1953. He asked me to prepare a statement explaining the origin and nature of the trust funds to accompany the return. I prepared a statement thereof containing an explanation of the totals of the funds for 1951-1954, the number of contributors, the average contribution, the total bank interest derived thereon and the average amount of interest earned per contributor and delivered it to him on November 23, 1955. I suggested to him at that time that returns for each of the years could be prepared and filed so that annual reports showing non-taxability would be of record. (That statement is annexed and incorporated in each of the returns for the calendar years 1951-1954 mailed by me to the Franchise Tax Board on January 30, 1956, and also in those mailed to the District Director of Internal Revenue, San Francisco, by me on April 13, 1956.)

On December 12, 1955, I telephoned Mr. Long and asked if he had the forms ready and he stated that he was making up both State and Federal forms to be filed for each of the years as he thought that would be the best way to handle it.

On December 30, 1955, I telephoned Mr. Long and asked him if he had the fiduciary returns ready and he told me the returns would be prepared by Jan. 2, 1956, and then could be filed and it is my recollection that he stated that there was no tax to be paid thereon because it was exempt. On Jan. 3, 1956, I telephoned him again and he informed me the said returns soon would be ready. On Jan. 4, 1956, he informed me by telephone that the forms would be ready "tomorrow."

On Jan. 9, 1956, Mr. Long telephoned me and stated that he had prepared the fiduciary returns. He stated that the State taxes were negligible and suggested that I pay them without contesting taxability. He also stated that if federal fiduciary returns were required to be filed and taxes paid on the interest

derived from the trust funds that the U.S. Tax for 1954 would be about \$786; for 1953 about \$1100 and 1952 about \$371. (My notes do not show what amount, if any, he said would be for 1951 but my recollection is that he said it would be small.) I then stated to him that he several times had informed me that the interest on the litigation funds was exempt and that no returns were required to be filed and he said, "I think now I was in error," but that he would ask the Internal Revenue Service for advice as to whether it required returns to be filed and whether the interest was taxable. I asked him to get a ruling and he said he would call the Internal Revenue Service and would let me know the result.

On January 18, 1956, I telephoned to the Franchise Tax Board in Sacramento and spoke to a Miss Kaelin (?) who was unable to give me an answer as to whether a State fiduciary return was required to be made on said trust interest. She referred me to Mr. Pasquet and Mr. Stansbury of the "specialist section" each of whom was unable offhand to venture a conclusive opinion for lack of a precedent. I was informed by Mr. Pasquet that although he could not give a positive answer because of the fact that the interest on the funds accrued to the contribution of each of the parties litigant that he thought that it might be ruled that because a trust fund was not opened up in the bank for each one of the parties litigant but the contributions of each were deposited in one savings bank account the interest on the total fund might require a fiduciary return to be made and the whole of the interest might be held to be taxable. During my discussion with him either he or I suggested that inasmuch as the total tax for each of the years would be comparatively small that I probably would save time and expense by paying it because were it ruled taxable the cost of contesting probably would exceed the cost of preparing the returns and paying such taxes. I stated that this appeared to be a practical solution that would save time and money and that I would do so. I notified Mr. Long of my talks with Mr. Pasquet and thereafter, on January 30, 1956, received from him the State fiduciary returns for 1951-1954 which he had prepared. I forwarded the returns to the Franchise Tax Board and discharged the \$4.92 tax for 1951, inc. interest; \$19.58 tax for 1952, inc. interest; \$52.63 for 1953, inc. interest, and \$39.46 for 1954, inc. interest on January 30, 1956. On that date Mr. Long informed me that he had not gotten a ruling from the Internal Revenue Service as to whether the bank interest was reportable and taxable but stated that it was his opinion that returns should be made and that the interest was taxable and that he would prepare the required returns. He delivered to me on said date such a state and federal fiduciary return for the year 1955, however, showing a State tax of \$29.98 and a federal tax of \$619.62 with instructions in writing that the returns should be signed and filed with the Director (IRS) and the Franchise Tax Board before April 15, 1956. He informed me also that he either was preparing or would prepare federal fiduciary returns for the prior years 1951-1954 so that if it were decided the interest was taxable the returns would be ready. (The 1955 State returns were mailed by me to Sacramento on February 16, 1956, but the 1955 federal return was retained by me until April 13, 1956, while I was awaiting a determination on the taxability question.)

Thereafter, between January 30, 1956, and April 11, 1956, I telephoned to Mr. Long and asked if the federal fiduciary returns were required and the interest taxable. I do not recall whether or not he informed me that any ruling had been made but he did state that they should be filed and that taxes were due thereon. He informed me also either that the returns were being prepared or soon would be prepared. On April 11, 1956, I telephoned to Mr. Long and he informed me he would have them ready by Monday, (the 16th). On April 12, 1956, he telephoned me the forms were ready. I went to his office where he stated that he found the federal fiduciary returns for 1951-1954 in his files and that they had been "prepared a long time ago" but somehow his office had failed to deliver them to me. Thereupon he delivered the returns to me. On April 13, 1956, the said returns covering 1951, 1952, 1953 and 1954, accompanied by payment of the taxes including interest, for each of said years were mailed by me to the District Director of Internal Revenue at San Francisco.

Date

June 28 1956

Signature

B. M. C.

Title

Atty. Gen.