CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 036

June 25 1958

ESTATES: INCOME AND BASIS; PROBATE CODE SECTION 201.5

Syllabus:

The treatment of income and basis of property in the estate of a deceased wife where the property is subject to the provisions of Probate Code Section 201.5 is as follows:

(1) One-half of the income of the estate is taxable to the survivor.

(2) Fair market value at the date of death is the basis for gain or loss of property sold during probate.

(3) One-half of the gain or loss on the sale of personal property during probate is taxable to the survivor.

A husband and wife acquired their wealth and properties while residing in noncommunity property statutes. The property was the separate property of each. They became domiciled in California and subsequently the wife died. Her estate was probated in California. Under Section 201.5 of the Probate Code one-half of her estate belonged to the husband. The other one-half was subject to disposition under her will. Also, certain assets were sold during probate. Advice is requested as to the treatment of income and basis of property in the estate of the deceased wife where the property is subject to the provisions of Probate Section 201.5.

Under Section 201.5, Probate Code, upon the death of either spouse personal property acquired while domiciled elsewhere, which if acquired while domiciled in California would not be the separate property of the decedent under our law, will be treated after death as belonging one-half to the surviving spouse and one-half subject to testamentary disposition of the decedent, and in the absence of such disposition this latter half will go to the survivor subject to decedent's debts and to administration. Although the survivor has no vested interest in his or her one-half of such property prior to death of the other spouse, the statute becomes operative upon death and decrees that half of such personal property belongs to the survivor. The one-half which belongs to the survivor is not subject to the debts of the decedent nor to administration.

Therefore, income from one-half is income to the survivor. Income from the other one-half is taxable to the estate in which it is required to be administered.

The basis of property acquired by inheritance is the fair market value at the date of death. It is clear from what has been said heretofore that the property in question could not be considered as community property prior to the wife's death and anything the husband acquired by reason of her death was acquired under the succession provisions of Section 201.5, i.e., by inheritance. The husband had no vested interest in said property prior to the wife's death. The basis of the entire property sold during administration is, therefore, the fair market value at date of death.

The discussion herein does not affect the established rules with respect to community property properly classified as such under other provisions of the Civil or Probate codes. Application of the rules and discussion herein must be limited to cases involving property which is subject to Section 201.5, Probate Code.