CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 066

June 27, 1958

DECEDENTS: FINAL RETURN: UNAMORTIZED COST OF IMPROVEMENTS

Syllabus:

A deduction for the unamortized cost of improvements to a physician's office was allowed on the final return of the physician where he held the office under an indefinite tenancy.

Taxpayer, a physician, maintained his office in a building owned by his father under an indefinite tenancy. In 1950 taxpayer made improvements to the office, intending to depreciate the cost over a ten year period. Taxpayer died in August of that year. On taxpayer's final return the entire unamortized cost of the improvements was deducted. Advice is requested whether the deduction should be taken on the taxpayer's final return or on the return of taxpayer's estate.

In order to determine when the loss was sustained, the legal relationship, i.e. the tenancy, out of which the loss arose must be considered. The tenancy clearly had no existence beyond the lifetime of the decedent and the right to occupy the premises never became an asset of the estate. Therefore, the loss is more closely related to the period reported in taxpayer's final return than to that of the estate's return.

In view of the reasonable justification for taking the deduction on taxpayer's final return and the lack of authority for requiring that it be taken on the estate's return, the deduction should be allowed on taxpayer's final return.