

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 108

May 16, 1958

CHARITABLE DEDUCTIONS: ESTATES

Syllabus:

Charitable deductions by an estate must be authorized by the terms of the will in order to qualify as a deduction under Section 17734 of the Personal Income Tax Law.

Under the will of Mrs. A, 5/6 of the residue of her estate was distributable to her husband and the remaining 1/6 to certain charities. The will made no provisions for current distribution of income. Subsequently the husband died and, under his will the residue of his estate was distributable to the same charities as mentioned in his wife's will. Since under the provisions of both wills Mrs. A's entire estate is ultimately destined for charitable purposes, the executor of her estate filed claims for refund for the years prior to distribution to the husband's estate claiming the income was deductible under the provisions of Section 17734 of the Personal Income Tax Law. Advice is requested whether the entire income is deductible.

Under the provisions of Section 17734, charitable contributions must have been authorized by the terms of the will. It is readily apparent from the will in question, that the only provision for charity under the will of Mrs. A, is the provision that 1/6 of the residue be applied for charity. To allow an additional deduction for amounts authorized in the will of the husband would be to violate the plain wording of the statute. Therefore, the estate is only entitled to a deduction for 1/6 of the estate income.