CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 109

May 16, 1958

PROPERTY RECEIVED BY REASON OF DEATH

Syllabus:

Retrospective evidence of factors which were unforeseeable on the date of decedent's death may not be used to rebut the presumption of value provided by Regulation 17746(3) that the basis of such property is the inheritance tax appraisal of value at the date of decedent's death.

Taxpayer's husband died owning copyrights upon various literary works which were appraised for inheritance tax purposes at $39,500. Fiduciary returns were filed by the estate indicating the income did not exceed the appraisal value and that such income constituted a recovery of basis. Five years later, due to a larger return on the property than anticipated, the estate claimed a basis of $150,000 contending that the inheritance tax appraisal was to low as the value of motion picture rights and cheap reprint rights had not been taken into consideration. A certain series written by the decedent had been revived for motion pictures after his death and cheap reprint rights refer to royalties from paper-bound, pocket-size publications. Advice is requested as to the proper basis of the property.

Section 18044 and Section 18045(a), (c), and (d) provides the basis for property acquired by reason of death shall be the fair market value at the date of death. The generally accepted definition of the term "fair market value" as developed by the courts and adopted by the Federal regulations is "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell". Regulation 17746(3) provides that the inheritance tax appraisal shall be deemed the fair market value at the date of death. However, it has been held that such a regulation creates a presumption only, but the presumption establishes a prima facie case which can be overcome only by very strong rebuttal evidence.

In the present case, Taxpayer's evidence relates to the earnings after the date of death and such retrospective evidence may not be used. Such evidence results from post-death events and could not have been available to a buyer and seller at the date of death, and could not enter into a determination of the fair market value. Although retrospective evidence might be of some use where it is the product of factors foreseeable at the date of death, such is not the situation in the present case. Here, unforeseeable factors affected the earnings; the revival of a series of motion pictures; the great increase in the sale of cheap reprints; the onset of television; and the general inflation which occurred during this period.

A buyer and seller could not have considered these unforeseeable factors on the date of decedent's death. Therefore, the basis of the property must be considered its inheritance tax appraisal value.