

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 160

December 2, 1957

COMMUNITY PROPERTY: AMOUNTS PAID AFTER DEATH

Syllabus:

Amounts paid after death for past personal services of the decedent are community property if they would have been considered community property if paid at the time services were rendered.

In recognition of services performed during decedent's lifetime, the Board of Directors of X Corporation caused \$12,000 to be paid to decedent's estate. The resolution authorizing payment, was as follows:

"Resolved that X Corporation pay to the estate of decedent the sum of \$2,000 per month for a period of six months in consideration for the past extraordinary services of decedent as the long-time President of this company".

Advice is requested whether the money paid into the estate for decedents past extraordinary services is community income.

In determining whether the character of the ownership of property is separate or community, the nature of ownership of property is established by proof of the mode of acquisition as well as time. Estate of Foy, 109 CA2d 329. Amounts received after dissolution of the community constitute community property if earned prior thereto. Estate of A. M. Berry, 44 BTA 1254; Crossan v Crossan, 35 CA2d 39. Had the amounts been paid during the lifetime of the decedent it would have been considered an amount derived from personal services and, as such, community property. Since the character of property is determined by the mode of acquisition, the character of the payments are not changed, although not paid until after the community is terminated by the decedent's death.

The estate can prove the mode of acquisition only by showing that the payments were received in consideration of the decedent's past personal services. Since earnings from past services are community property, it must be concluded that the payments received, being attributable to decedent's past personal services, are community property regardless of the fact that the community was terminated prior to the payment because of the decedent's death.