

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 185

June 7, 1956

BASIS AND HOLDING PERIOD: PROPERTY ACQUIRED THROUGH EXERCISE OF POWER OF APPOINTMENT

Syllabus:

Property passing under the exercise of a general testamentary power of appointment has as its basis, in the hands of the recipient or appointee, the fair market value as of the date of the death of the person exercising the power and the holding period runs from that same date.

X, who died in 1938, created a trust for his son Y by will. Under this trust Y had a life estate in the trust income and the will gave Y a general testamentary power of appointment over the corpus of the trust. Y died on August 21, 1943 and by his will provided that the corpus was to pass to Z. The trust corpus was actually delivered to Z by the trustee in 1945.

Advice is requested as to the correct basis and holding period to Z for the assets which comprised the corpus of the trust. The above ruling is based on Section 18045 (d) of the Personal Income Tax Law.

A general power of appointment is treated for most purposes as the equivalent of ownership because the donee can appoint to anyone he chooses, subject to no limitations, and thus he can acquire actual ownership for himself or his estate. For this reason, property acquired through the exercise of a general power should be treated as property acquired from the holder of that power himself, and not from the person who created the power. In conformance with this PITL Section 18045 provides that "property passing without full and adequate consideration under a general power of appointment exercised by the decedent by will", should be considered to have been acquired from or to have passed from the decedent. Therefore, in the instant case the assets received by Z are to be treated as property passing from Y, and under Section 18044 their basis in the taxpayer's hands is the fair market value as of the date of Y's death (August 21, 1943) and the taxpayer's holding period runs from that date.