

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 196

February 25, 1957

BASIS: WIDOW'S BASIS FOR UNSEVERED CROPS AND ASCAP ROYALTIES

Syllabus:

Where a husband's community interest in unharvested crops and in copyrights on songs written by him during marriage passes to his widow on his death, the widow's basis for the crops, for a posthumous ASCAP membership and for the publication rights is fair market value on the date of death if at least one-half the value of the property was included in the computation of inheritance tax.

Taxpayer's husband died on April 1, 1955. Taxpayer inherited her husband's one-half interest in unharvested crops and in copyrights on songs written by the husband. All property was the community property of the spouses. The crops, the anticipated earnings of the posthumous ASCAP membership and the publication rights in the songs were all valued on the husband's death. One-half of the value of each was included in the computation of inheritance tax. Advice has been requested as to what is the widow's basis for the property.

The widow's basis for the property is determined by Section 18045(e) which provides that the surviving spouse's share of community property shall be deemed to have passed from the decedent if at least one-half of the entire community property was includible in the computation of Inheritance Tax on the decedent's estate. In such a case both halves of the community property constitute property passing from the decedent and the basis for the entire property is its fair market value on the date of death. Section 18044. In the instant case, therefore, the widow's basis for each item of property is the fair market value of that property as of the date of the husband's death.

None of the property involved constitutes "a right to receive income in respect of a decedent" under Sections 17831 to 17837. The unharvested crops represented a possibility of future income but no income has been earned as of the date of decedent's death. The crops constituted a property asset of the decedent but he had no right to income until that asset was liquidated. Estate of Burnett, 2 TC 897; Rose J. Linde, 17 TC 584. Under the Articles of Association of ASCAP, a songwriter's membership ceases upon death and a posthumous membership may be issued to the successor in interest of the copyright. Thus the royalties which a widow receives under a posthumous membership do not constitute income earned by the decedent or under a contract negotiated by him. They are received under a contract which she herself negotiates on the basis of her property interest in the copyright. Thus the value of those royalties does not constitute "income in respect of a decedent" and the same is true of the value of the publication rights assuming that the latter were not contracted away by the decedent.