

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 205

September 26, 1957

ESTATES: CHARITABLE DEDUCTIONS BY ESTATES OF NONRESIDENT TAXPAYER

Syllabus:

Where a decedent's will provides that an estate is to set aside monies for the charitable purposes specified in Sections 17315 and 17383 of the 1954 Personal Income Tax Law the deduction for such monies is limited to those amounts set aside for charities organized and operated under the laws of this State if the taxable year is one to which the 1954 law applies. In all other cases the location of the charities will be irrelevant.

Section 18132 of the Personal Income Tax Law of 1954 allows a deduction to estates and trusts for amounts of gross income which, under the terms of the will or declaration of trust, are to be distributed in a manner which will qualify as charitable contributions within the meaning of this provision of the Law. This deduction is allowed in lieu of the deductions for contributions authorized for individuals by Sections 17315 and 17383. To qualify as a charitable contribution under Section 18132 the amount must, under the terms of the will or declaration of trust, be either (1) "paid or permanently set aside for the purposes and in the manner specified in those sections" (Section 17315 and 17383, dealing with contributions generally), or (2) it must "be used exclusively for religious, charitable, scientific, literary, or educational purposes" etc. Since these two qualifications are stated in the disjunctive in the wording of Section 18132, the deduction will be proper if the amount qualifies under either clause.

Where the taxpayer is the estate of a nonresident individual, if the deduction is to qualify under the first of the above quoted qualifying phrases the deduction is limited to amounts set aside for charities organized and operated under the laws of this State because Section 17383 is a limitation contained in that qualifying phrase. If however, the deduction is for money which, pursuant to the terms of the will, is to be used exclusively for religious, charitable, etc." purposes the location of the charities is irrelevant and in no way limits the deduction.

Under the Personal Income Tax Law as amended in 1955 the location of the charities is irrelevant in all cases because Section 17734, the 1955 equivalent to Section 18132, omits any reference to Section 17383 or its 1955 counterpart.