CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 225

October 27, 1959

ESTATES, COMMUNITY PROPERTY: WIDOW’S ELECTIONS TO TAKE UNDER WILL

Syllabus:

An agreement by a wife to take according to her husband's will and waive her community property rights in the estate does not convert community property to separate property. The income is taxable one-half to the estate and one-half to the widow. The wife's basis on distribution is fair market value, if the husband died after April 8, 1953.

Based upon the decision of the District Court in Wells Fargo, Executor of the Will of Walter Gibson v. United States, Legal Ruling No. 177, (Published Legal Ruling Commerce Clearing House, 201-131; Prentice Hall, 58, 640) concluded that an election by the widow to take under her husband's will and waive her community property rights changed the character of the community property to separate property. The Gibson case was reversed on appeal, 254 F. 2d 524 (9th Circ.). Therefore, an election by a widow to take under the husband's will does not convert community property to separate property. During administration the income from such property is taxable one-half to the estate and one-half to the widow. On distribution to the widow the basis of the community property is cost to the extent it represents the wife's one-half interest, and fair market value at the date of death as to the part representing the husband's one-half interest. But if the husband died after April 8, 1953, the basis for all the community property is fair market value at the date of death.

Legal Ruling 177 is withdrawn.