

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 258

August 21, 1964

DEDUCTION: EXPENSES OF ADMINISTRATION OF A COMMUNITY PROPERTY ESTATE

Syllabus:

Taxpayer died December 18, 1955. At the time of his death all of the property owned by him and his wife, was community property. Taxpayer's will provided for the disposition of all of the property owned by him and his wife. Concurrently with the execution of his will, his wife executed an election to accept and acquiesce in the provisions of the will, waiving all claims to her share of any community property. The will provided for the wife as follows:

"I hereby give, devise, and bequeath that portion of the residue of my estate which shall equal one-half of our total community estate before estate and inheritance taxes and costs of administration of my estate, and before the specific bequests made under "THIRD" above, to the Security-First National Bank of Los Angeles, a national banking association including any success or of that Bank, whether by way of transfer of trust business, merger, consolidation, conversion into a state bank, or otherwise, in trust, for my wife to be held, managed and distributed as hereinafter provided."

Upon the death of taxpayer, all of the property of both him and his wife came under the administration of the executor of his estate.

The estate and taxpayer's wife filed separate returns for the year 1956. Each reported one-half of the income, and claimed one-half of the total expenses of \$33,900.77 incurred by the estate in the administration of the property and investments held by the executor of the estate.

Is the wife precluded from claiming one-half of the expenses incurred in the administration of the property because the provisions of the will give her in trust an amount equal to one-half of the total community estate before costs of administration?

The problem is whether the manner of the former community property under the provisions of the husband's will should control the determination of who may claim the expenses of administration of such property during the period of administration.

In the situation where the estate being administered consists entirely of the

former community property of the decedent and his wife, the rule has been established that one-half of the income is taxable to the estate and one-half to the wife. Wells Fargo Bank & Union Trust Co. v. U.S., 245 Fed. 2d 524. And it is generally accepted that the person who must report the income is entitled to claim the deductions applicable to that income. Stewart v. Commissioner, 95 Fed. 2d 821; Bishop v. Commissioner, 152 Fed. 2d 389.

Under California law, the entire community property is subject to the expenses of administration. Estate of Coffee, 19 Cal. 2d 248; Estate of Atwell, 85 Cal. App. 2d 454; Estate of Cushing, 113 Cal. App. 2d 319. The wife's share of the former community property is only one-half remaining after payment of the costs of administration; any additional amount that she receives under the terms of the husband's will is a testamentary gift from the husband to her from his share of the property. Estate of Coffee, supra, 253.

Accordingly, it is our opinion that taxpayer's wife is entitled to claim a deduction for one-half of the expenses of administration on her return reporting one-half of the income. The additional amount given her in excess of her net share of the property, after the deduction of her share of the expenses, is a testamentary gift to her from her husband's estate, and does not preclude her from claiming a share of the expenses incurred in the administration of her share of the former community property. The disposition of the estate and the wife's right to claim a deduction for expenses applicable to income reported by her are matters that are independent of each other.