

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 391

September 22, 1975

BASIS: COMMUNITY PROPERTY ASSETS SOLD BY EXECUTOR OR SURVIVING SPOUSE

Syllabus:

The husband died testate prior to July 1, 1975, and left his half of the community property in trust with the income payable to his wife during her life with the remainder to others. The fiduciary of the estate must sell stocks to pay community debts and administrative expenses. In addition, the fiduciary may be required to sell additional stocks to pay estate taxes.

Questions:

1. What is the basis to be used for the shares of stock sold, assuming the stocks are sold to pay expenses chargeable against the entire community?
2. Would the basis differ if the stocks were sold to pay estate taxes?
3. Would the answers to 1. and 2. above be the same if a portion of real property were sold?
4. If a partition of assets was made by value, is Legal Ruling 275 still applicable?

Decision and Discussion:

1. Section 18044 of the Revenue and Taxation Code provides that the basis of property acquired from a decedent shall be the fair market value of the property. Under Section 18045(a), property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent shall be considered to have been acquired from the decedent. Section 18045(e) allows a fair market value basis to be assigned to the surviving spouse's one-half share of community property if at least one-half of the whole community property interest was includible in the decedent's gross estate for purposes of the California Inheritance Tax Law.

Under the facts given, the property left in trust by the decedent passed from him to his estate and takes a fair market value basis. The surviving wife's interest in the community property is present, existing and equal. California Civil Code Section 5105. Her interest, therefore, was not acquired from the decedent and its basis remains cost. Since the life estate carved from the

decedent's community property interest is not subject to inheritance tax, at least one-half of the total community property is not includible in the gross estate and the surviving wife's community property interest does not obtain a fair market value basis under Section 18045(e). Appeal of Estate of Philip Rosenberg, etc., Cal. St. Bd. of Equal., August 19, 1975.

Prior to July 1, 1975, the entire community property passed to the executor or administrator and was subject to probate. The entire community property was subject to costs of administration. Estate of Phillips, 123 Cal.App.2d 570 (1954). Therefore, stocks sold to pay expenses chargeable to the entire community property have a basis of one-half fair market value and one-half of the original basis to the community.

2. The federal estate tax is not a charge against the wife's share of the community property. Estate of Cushing, 113 Cal.App.2d 319 (1952). Thus, stock sold to pay estate tax would necessarily have been a part of the deceased husband's community property and would have a fair market value basis.

3. The answers to questions 1. and 2., above, would be the same if real property rather than stock were sold.

4. If a partition of assets is made by value, the rules set forth in Legal Ruling 275 are still applicable.