

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 393

November 4, 1975

SURVIVING SPOUSE'S BASIS FOR QUASI-COMMUNITY PROPERTY

Syllabus:

The surviving spouse's one-half interest in Probate Code Section 201.5 quasi-community property receives a stepped-up basis under Sections 18044 and 18045

Facts:

Advice has been requested concerning the basis of a surviving spouse's interest in quasi-community property as defined under Probate Code Section 201.5 (hereinafter referred to as "Section 201.5 property").

Decedent died on January 14, 1971. His estate included Section 201.5 property consisting of personal property acquired by him. Under decedent's will, his one-half interest in the property in question was placed in trust for the benefit of his surviving spouse and their children. The surviving spouse elected under Probate Code Section 201.7 to take under the decedent's will, and placed her one-half interest in the Section 201.5 property into the same trust. The Section 201.5 property assets were sold during probate, thus presenting a question of basis of the assets.

Question:

Is the surviving spouse entitled to a stepped-up basis (fair market value) for her one-half interest in Probate Code Section 201.5 quasi-community property?

Decision:

Yes.

Discussion:

The pertinent part of Probate Code Section 201.5 provides that upon the death of any married person domiciled in California, all personal property, wherever situated, which was acquired by the decedent while domiciled elsewhere that would have been community property if the decedent had been domiciled in this state at the time of acquisition, shall belong one-half to the surviving spouse and one-half shall be subject to the testamentary disposition of the

decedent.

In order for a surviving spouse's interest in Section 201.5 property to obtain a stepped-up basis under Revenue and Taxation Code Section 18044, the property must have been acquired by one of the methods delineated in Revenue and Taxation Code Section 18045.

Section 18045(a) provides that property acquired by request, devise, or inheritance qualifies for a stepped-up basis under Section 18044. Probate Code Section 201.5 has long been held to be strictly in a noncommunity property jurisdiction. (In Re Miller, 31 Cal.2d 191, 187 Pac.2d 722 (1947); Paley v. Superior Court, 137 Cal.App.2d 450, 290 Pac.2d 617 (1956); Estate of Patell, 221 Cal.App.2d 376, 34 Cal.Rptr. 512 (1963).) The spouse who takes a one-half interest in Section 201.5 property, that was acquired in a noncommunity property jurisdiction, does so by inheritance. (Paley v. Superior Court, supra.) Thus, it is clear that the survivor's interest in 201.5 property acquired in a noncommunity property jurisdiction qualifies for a stepped-up basis. This conclusion is consistent with the opinion expressed in Legal Ruling No. 036, CCH 200-990, PH 58,549.

The above conclusion was based upon the assumed fact that the 201.5 property was acquired by the decedent in a noncommunity property jurisdiction. Section 201.5 makes no distinction as to the jurisdiction in which the property was acquired, i.e., it applies to property acquired in either a noncommunity or community jurisdiction. If Section 201.5 property was acquired in a community property jurisdiction, then Section 18045(e) governs the surviving spouse's interest in such property.

Section 18045(e) provides that property, which was acquired under the community laws of any jurisdiction, can obtain a stepped-up basis if at least one-half of the whole of the property is includible in the value of decedent's gross estate under the Inheritance Tax Law. Revenue and Taxation Code Section 1355 provides that at least one-half of Probate Code Section 201.5 property is included in the decedent's estate and is subject to inheritance tax. Thus, the survivor's interest receives a stepped-up basis under Section 18044 and Section 18045(e) when the Section 201.5 property was acquired in another community property jurisdiction.