

Basis of Property Decedent and Surviving Spouse

1039

Type of Ownership By Decedent	Date of Death	Beneficiary of Decedent's Share	Basis of Property	
			Decedent's Share	Surviving Spouse's Share
Separate Property. ^{1 2}		Beneficiary	FMV	N/A
Community Property. ^{2 3 17}	Prior to 4/8/53.	Spouse	FMV	Cost
	After 4/7/53.	Husband - Any portion of wife's share.	FMV	Cost
	After 4/7/53 - Prior to 9/15/61.	Wife - Any portion of husband's share.	FMV	FMV
	After 9/14/61. (See exception)	Wife - Any portion of husband's share.	FMV	Cost
	After 6/7/82 - Prior to 1/1/87	Other than spouse	FMV	Cost
	After 12/31/86	Spouse or anyone other than spouse	FMV	FMV
Exception where husband dies between the following dates. ⁴	After 9/14/61 - Prior to 9/17/65.	Wife - Life estate or power of appointment.	FMV	FMV
	After 4/7/53 - Prior to 6/8/82.	Other than spouse	FMV	FMV
Property was originally separate property of either spouse and was converted to community property by agreement after 9/16/65. ⁵	After 9/16/65 - Prior to 1/1/76.	Spouse	FMV	FMV
Quasi-community property acquired in a non-community property jurisdiction. ⁶	After 4/7/53.	Spouse	FMV	FMV
Quasi-community property acquired in another community property jurisdiction. ⁷	After 12/31/75.	Spouse	FMV	Cost
Quasi-community property acquired in any jurisdiction. ⁸	After 4/7/53 - Prior to 1/1/76.	Spouse	FMV	FMV
Joint Tenancy with Spouse. ^{2 9}				
a. Source of funds, not important ¹⁰	Prior to 1/1/55.	Spouse	Cost	Cost
b. Source of funds, not important unless c. below.	After 12/31/54 - Prior to 9/7/55.	Spouse	FMV	Cost
c. Source of funds, separate property of spouses. ¹¹	After 12/31/54 - Prior to 1/1/81.	Spouse	Adj. FMV	Cost
d. Source of funds, originally community property of spouses. ¹²	After 9/6/55 - Prior to 1/1/76.	Spouse	Cost	Cost
¹³	After 12/31/75 - Prior to 1/1/81.	Spouse	FMV	Cost
Exception where husband dies between the following dates.	After 9/6/55 - Prior to 9/15/61.	Wife	FMV	Cost
e. Source of funds, quasi-community property of spouses. ¹⁴	After 9/14/61 - Prior to 6/8/82.	Spouse	FMV	Cost
f. Source of funds, separate or community property of spouses. ¹⁵	After 12/31/80 - Prior to 6/8/82.	Spouse	Cost	Cost
g. Source of funds, not important.	After 6/7/82 - Prior to 1/1/85.	Spouse	Cost	Cost
h. Source of funds, not important.	After 12/31/84.	Spouse	FMV	Cost
Decedents dying after 12/31/76 and prior to 11/7/78. ¹⁶				

Definitions and Notes for Purposes of Determining Basis of Property of Decedent and Surviving Spouse

References are to the Internal Revenue Code (IRC) and the California Revenue and Taxation Code (R&TC).

¹ Separate Property — In general, all assets held by a single person, except those held in joint tenancy, are separate property. Assets acquired with separate funds during marriage are also the separate property of the person acquiring such property.

Pre-1927 community property is treated as the husband's separate property. See *Estate of Cushing*, 113 Cal. App. 2d 319, 326-27 (1952); *Riley v. Gordon*, 137 Cal. App. 311, 314-15 (1934). Wife had a right to dispose of up to one-half of community property by will between 7/16/23 and 7/29/27.

² If decedent died after 6/7/82 and prior to 1/1/85, the basis of surviving spouse's share of property described in R&TC Section 18045 subdivision (e) and survivor's share of property described in R&TC Section 18045 subdivisions (g) and (h) (see R&TC Section 18033 for taxable years starting in 1983) will not be adjusted to fair market value but will remain at cost under Section 18042 (see R&TC Section 18031 for taxable years starting in 1983) because subdivisions (e), (g), and (h) contain reference to California inheritance tax, which was repealed for decedents dying after 6/7/82 (Proposition 6, 6/8/82 primary election). The basis of surviving spouse's share of community property described in subdivision (f) applies to taxable years beginning before 1976 and therefore will not be affected by repeal of the Inheritance Tax Law. See FTB, LR 423, 11/11/82.

If decedent died after 12/31/84, generally the basis of property acquired from a decedent conforms to federal rules. However, the surviving spouse's share of community property continues to have cost basis (see R&TC Section 18033/IRC Sec. 1014(b)). The basis of decedent's share of property described in R&TC Section 18033/IRC Sec. 1014(b)(1) through (4) will usually be adjusted to fair market value on the date of the decedent's death. (See IRC Sec. 1014(a)). However, if heirs elect to use the IRC Sec. 2032 alternate valuation of property or the IRC Sec. 2032A valuation of certain farm, etc., real property for purposes of the Federal estate tax, then that value must be used as the basis for purposes of California income taxation instead of the stepped-up fair market value on the date on the date of death (See IRC Sec. 1014(a)).

³ Community Property — Only post 7/29/27 community property is considered. For treatment of pre-1927 community property, see footnote ¹ above.

Property acquired after 7/29/27, by either spouse during marriage, except that acquired by gift or through testate or intestate succession, is community property.

⁴ During the years between 9/15/61 and 9/16/65, R&TC Section 13551(a) contained provisions which subjected decedent husband's community property to inheritance tax under certain conditions. If the husband left his community property to the wife in the form of a life estate or gave her a general or special power of appointment to his community property placed in trust, his community property was subject to inheritance tax. Therefore, under R&TC Section 18045(e) the wife would receive a fair market valuation on her share of the community property. In 1969, in the *Estate of Legatos*, 1 Cal. App. 3d 657, the court held that the reference provisions of R&TC Section 13551(a) were unconstitutional. Even so, the wife's interest in the community property should still receive a fair market value for income tax purposes, unless the inheritance tax was not actually paid as was the situation in the *Legatos* case, *supra*. Where taxes were actually paid on the husband's community property interest under R&TC Section 13551(a), the taxes would not be refunded, and the payments are considered valid taxes when paid. See *Wingert v. City and County of San Francisco*, 134 Cal. 547 (1901).

⁵ See R&TC Sections 18044, 18045(e) and 13560. Under R&TC Section 13560, separate property of either spouse which is converted into community property by agreement is treated for inheritance tax purposes only, as separate property, with each spouse having a one-half interest. Since it is separate property, the decedent's one-half interest is included in the decedent's estate and is subject to inheritance tax. For income tax purposes the property is treated as community property. Since one-half of this community property was included in the decedent's estate for inheritance tax purposes, the surviving spouse's one-half interest receives a stepped-up basis under R&TC Sections 18044 and 18045(e). R&TC Section 13560, which created the distinction, was repealed effective for decedents dying on or after

1/1/76. Thereafter, the property is community property for both inheritance and income tax purposes. For deaths occurring after 12/31/75, see Basis under Community Property Section.

⁶ Quasi-Community Property means that property described in Probate Code Section 201.5 and R&TC Section 15300. See also R&TC Sections 13555 and 13672. In general, property acquired while domiciled outside of California, which would have been community property if domiciled in California, is quasi-community property. After 12/31/34, quasi-community property included only tangible personal property until 9/20/47 when all personal property was included. Also, after 9/11/57 all real property in California was included.

If the quasi-community property was acquired in a noncommunity property jurisdiction, the surviving spouse's interest obtains a stepped-up basis under R&TC Sections 18044 and 18045(a) since the property is considered to be acquired by inheritance from the decedent. See *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).

⁷ If the quasi-community property was acquired under the laws of another community property jurisdiction, the surviving spouse's interest does not obtain a stepped-up basis because the survivor had a present, existing interest in the property and, consequently, does not "acquire it from the decedent."

⁸ Under R&TC Section 13555, one-half of quasi-community property is includible in decedent's estate for inheritance tax purposes. Under R&TC Section 18045(e), the surviving spouse's share can obtain a stepped-up basis if the property was acquired in another community property jurisdiction and at least half was included in the decedent's estate for inheritance tax purposes.

⁹ Joint Tenancy — In general, a person may hold assets in joint tenancy with at least one other person. Assets acquired prior to marriage or during marriage may be originally held in joint tenancy or later converted to this form of ownership.

Joint tenancy ownership carries with it the right of survivorship. Upon the death of one of the joint tenants, the surviving joint tenant acquires the

decedent's share by right of survivorship and not by inheritance.

¹⁰ Prior to 1955, the law did not specifically provide for a stepped-up basis where the property was held as joint tenancy and the decedent's contribution was includible for inheritance tax purposes.

¹¹ A stepped-up basis can only be obtained for that portion of the property attributable to decedent's separate property contribution and included in decedent's estate for inheritance tax purposes. See R&TC Sections 13671, 18044 and 18045(h). Under R&TC Section 18045(h) the stepped-up basis of any joint tenancy property is equal to the fair market value "reduced by the amount allowed to the taxpayer as deductions in computing taxable income under this part or prior income tax laws for exhaustion, wear and tear, obsolescence, amortization and depletion on such property before the death of the decedent."

¹² If decedent died after 9/6/55 and prior to 1/1/76, cost basis under R&TC Section 18042 must be used for property which was originally community property of the spouses (does not include separate property converted to community property by agreement) and which was turned into joint tenancy property. Such property does not qualify for stepped-up basis under R&TC Section 18045(g) because none of it is included in decedent's estate for inheritance tax purposes (see R&TC Sections 18671.5 and 13551). Nor does it qualify for stepped-up basis under R&TC Section 18045(a) because it is acquired by right of survivorship.

¹³ Under R&TC Section 13551, amended, all of decedent's one-half interest in community property is subject to inheritance tax. To the extent the property is includible in decedent's estate for inheritance purposes, a stepped-up basis is obtained under R&TC Section 18045(h).

¹⁴ See R&TC Sections 18044, 18045(h) and 13672. Under R&TC Section 13672, each spouse is deemed to have made one-half of the contribution for any quasi-community property held in joint tenancy. For purposes of this section, property which is community property under the law of another jurisdiction is classified as quasi-community property.

¹⁵ Prior inheritance tax law (ch. 634, Laws 1980, repealing R&TC Section 13551 and amending former Section 13805) provided that joint tenancy property from separate or community

property sources transferred from the decedent to the surviving spouse is not subject to inheritance tax (except for certain powers of appointment). Therefore, the basis of such joint tenancy property derived from separate or community property is cost.

¹⁶ For decedents dying after 12/31/76, and before 11/7/78, the carryover basis provisions under R&TC Section 18047 may be applicable if the carryover provisions were elected for Federal purposes.

In 1977, California adopted the federal "carry-over basis" provisions of IRC Section 1023 for property acquired from a decedent dying after 1976. In 1980, Congress repealed the federal "carry-over basis" provisions of IRC Section 1023 but permitted a decedent's estate to retroactively elect the "carry-over basis" provisions under IRC Section 1023 for property acquired from a decedent dying after 1976 and prior to 11/7/78. California adopted the election of carry-over basis provisions by permitting federal election to apply for California purposes unless the Franchise Tax Board is notified to the contrary.

¹⁷ If death occurred after 12/31/86, the basis of the surviving spouse's one-half interest in the community property is fair market value in conformity with Federal law.