

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 014

June 27, 1958

COMMUNITY INCOME: DURING ADMINISTRATION OF WIFE'S ESTATE

Syllabus:

Community income is taxable during the administration of the deceased wife's estate as follows:

1. Where she wills her interest in the community property, that being her only asset, to the husband and also providing in her will that certain taxes be paid out of her estate, the community income is taxable one-half to the husband and one-half to the wife's estate.
2. Where the wife wills her share of the community property to her husband, it is taxable all to the husband, unless other consideration requires her share to be included in the probate of her estate.
3. Where the wife wills her share of community property to someone other than her husband, it is taxable one-half to the wife's estate.
4. Where the wife dies without leaving a will but her half of the community property is included in the probate of her estate, it is taxable all to the husband unless there appears a valid requirement for probate of the wife's half of the community property.

In the instant case the wife pre-deceased the husband leaving only an interest in community property which she specifically willed to her husband. It was also provided that certain taxes, including estate taxes, were to be paid out of her estate. According to her husband, who was appointed executor, administration of her half of the community property in the estate was required to take care of this latter provision, inasmuch as there was no other property out of which said taxes could be paid pursuant to her will. On the returns one-half of the community income was reported by the estate and one-half by the husband. Advice is requested regarding to whom the community income is taxable during administration of the deceased wife's estate under the following circumstances:

1. In the instant case.
2. Where the wife wills her share of the community property to her husband.
3. Where the wife wills her share to someone other than her husband.

4. Where the wife dies without leaving a will but for some reason her half of the community property is included in the probate of her estate because of the peculiar nature of the community interest of the husband in the event the wife dies first, the income of the wife's one-half of the community is taxable to the estate only where said share is "properly" subject to administration (Reg. 18101-06 (a)(6), added July 24, 1950). Thus, in each case where the wife's half is included in the administration of her estate the question arises as to whether it is "properly" subject to such administration.

Normally, probate in such cases is unnecessary except where the wife exercises her right of testamentary disposition by disposing of her share of the community property to someone other than her husband; the principal reason being that the community property is not subject to her debts. Less frequently, it may be necessary to include her share of the community property in the probate estate in order to establish proper title or community status. For example, if community property stands in the wife's name alone or where community property appears in joint tenancy it would be necessary to include it in the probate of her estate where it is desired to establish it as community property. In other instances her share may be included in her estate as a matter of practice but not as a matter of necessity.

Turning to the questions presented here, probate and administration of the community property in this estate was made necessary because of the direction in her will that certain taxes be paid out of her estate. Inasmuch as she left no other property out of which such taxes could be paid, this in effect amounted to a disposition with respect to her share of the community property. Therefore, the administration appears to have been "proper" within the regulation and one-half of the income is taxable to her estate.

The second question is also involved in the instant case. In the absence of other reasons requiring probate a provision in the wife's will that her share of the community is to go to her husband should be disregarded, for our purposes, as being redundant. It merely states a fact which would exist even in the absence of such a provision. Other reasons for probate existed in the instant case; in their absence the entire income would be taxable to the husband.

With reference to the third question, where the wife exercises her right of disposition, probate is definitely required and any community income during the period of administration would be taxable one-half to the husband and one-half to the wife's estate.

The fourth question is similar to that presented in the case of Marin Caratan (14 TC 934). While the conclusion there was perhaps justified, it is believed that the Tax Court's interpretation of California community property and probate laws should not be blindly accepted as being entirely correct. In that case the wife died without leaving a will. The title company required probate

and the court assumed that there was a valid reason therefor. It can be inferred that the title to the real property in question was not clear and that probate was perhaps necessary. Under such circumstances it would be proper under our regulation to tax one-half of the community income to the wife's estate and one-half to the husband. Where the wife dies without leaving a will and there appears no valid requirement for probate, all of the community income should be taxed to the husband.

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