

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 126

May 13, 1958

TRANSFEEE LIABILITY

Syllabus:

Requirements to establish transferee liability not met on the particular facts.

Jeopardy assessments were issued for the years 1947, 1948, and 1949 against Mr. and Mrs. Taxpayer on the assumption their income was community property. It has subsequently been disclosed that Taxpayer's marriage was void because of bigamy and thus created no community. The entire tax should have been levied against Mr. Taxpayer. He has been adjudged a bankrupt, and the only known assets is the home of Mrs. Taxpayer which was a gift from Mr. Taxpayer in June, 1948. Advice is requested whether Mrs. Taxpayer may be held liable as a transferee.

Transferee liability is imposed as a constructive trust upon those persons who receive property gratuitously which should have been used, in good conscience to satisfy the debts of the donor. Transferee liability is predicated upon the following factors:

1. The transferee must have been liable and all remedies against him exhausted.
2. There must have been a transfer of assets without full consideration.
3. The transfer must have been made after the liability was incurred.
4. The transfer must have been made while the transferor was insolvent, or must have rendered him insolvent, or must have been in fraud of creditors.

In the present case only the first requirement is clearly met. With respect to the second requirement, a want of consideration has not been established. As to the third requirement, Mrs. Taxpayer would be liable for the year 1947, and possibly for the year 1948 under the rule of J. W. Leach, 21 TC 70, and Wyche, 36 BTA 414, which hold that a transferee is also liable, retroactively, for taxes in the year of transfer. Regarding the fourth requirement, Mr. Taxpayer's net income for 1948 was \$500,000 and for 1949 was \$130,000, it is difficult to assert that he was insolvent or that the conveyance prejudiced creditors. Furthermore, if the conveyance had been fraudulent, the property would have been included in the bankrupt estate. Therefore, transferee liability cannot be established against Mrs. Taxpayer.