CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 182

April 18, 1956

BASIS: COMMUNITY PROPERTY ACQUIRED BY HUSBAND FROM DECEASED WIFE

Syllabus:

A surviving husband's basis as to community property is fair market value as of date of wife's death for the one-half of the community property acquired from wife and cost or adjusted basis as to his own one-half.

Advice is requested as to the basis in a surviving husband's hands of community property acquired from a deceased wife. The above ruling is based on Personal Income Tax Law Section 18045(e).

Under the Personal Income Tax Law prior to 1953, on the death of either spouse the surviving spouse's basis for the community property was deemed to be (1) fair market value as of the date of death with regard to the one-half of the community property received from the decedent and (2) cost or other basis to the community with regard to the one-half which originally belonged to the survivor.

In 1953 Section 17746.3 (now Section 18045(e) ) was added to the Personal Income Tax Law to provide that the survivor's one-half of the community property would have a fair market value basis "if at least one-half of the whole of the community interest in such property is includible in determining the value of the decedent's gross estate under Chapter 3 of the California Inheritance Tax Law".

The result of this provision is that the entire community property will have a fair market value basis if at least half of it has been subject to California Inheritance Tax Law. Under the terms of Section 13553 of the Revenue and Taxation Code, however, none of the community property which passes to the husband on the wife's death is subject to the Inheritance Tax Law and none of it will be included in the value of the wife's estate. Therefore, Section 18045(e) is only applicable where the husband is the deceased spouse. Whenever the wife dies first the pre-1953 rule will still apply.