

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 273

September 17, 1964

ESTATES: FAMILY ALLOWANCE

Syllabus:

During the taxable year 1956 the estate of X paid \$4,000 to Y, the decedent's widow, as family allowance pursuant to a court order providing that the amounts paid be charged against and paid from income. The payments were made from the estate's income. No deduction was taken at the time the estate's return was filed. Later the estate filed a timely claim for refund, claiming a deduction for the family allowance and other items. A similar claim filed with the Federal Government has been allowed.

After the estate filed its state claim for refund, Y filed an amended return for 1956 which included the family allowance payments as income and paid the additional tax due. Y also filed a protective claim for refund on the grounds that if the estate could not deduct the family allowance, taxing her on the payments would be improper.

(1) Can an estate deduct amounts paid from income as family allowance pursuant to a court order which required the payments to be charged against and paid from income?

(2) If the estate is entitled to a deduction, is the recipient taxable on the income received?

(1) California law makes the family allowance a charge against all the assets of the estate. Estate of Howe, 88 Cal. App. 2d 454 (1948). It can be inferred from the California cases that the probate court has discretion to charge the family allowance against income in the absence of testamentary intent to the contrary or special circumstances. Estate of Resler, 43 Cal. 2d 726, 736, et seq. (1954).

Pursuant to Reg. 17761(b)(5) a family allowance is deductible if a court order requires it to be charged against and paid from income, even though under local law it would be charged against corpus. This conclusion is not inconsistent with Carson, 8 TCM 1100, since there was no court order charging the family allowance against income in that case. In addition, the prior law under which the Carson case was decided was interpreted differently from the present law. Compare the Commissioner's letter ruling dated February 18, 1948, with Federal Reg. 1.661(a)(2)(e). Finally the allowance of the Federal claim for refund lends further support to the conclusion reached here.

The estate should therefore be allowed a deduction to the extent that a family allowance is paid from income pursuant to court order.

(2) If the estate is allowed a deduction the recipient should be taxed on the income. In the absence of case law or a Federal revenue ruling on the subject, we interpret the word "beneficiary" in Section 17762 to include these payments. An alternative theory is that family allowance payments under these circumstances are income within the meaning of Section 17071. The conclusions reached in this memorandum are in accord with the views expressed by the author of the article in 1959 So. Calif. Tax Institute, 689, 703.

"exempt from taxation" were intended to, and did, apply only to property taxes.

In view of the holding in the Simpson case, where the California Supreme Court interpreted a clause of exemption identical to the one before us, contained in an act also dealing with a retirement system, the concluding language of the decision applies here with particular force:

[We] would not be justified in holding the exemption from taxation clause to apply beyond the limits of property taxation, and if further extension is deemed appropriate . . . the act should be so clarified by the Legislature in unmistakably clear language.

Therefore, as the contributions were income to appellant, we find that they were not exempt from income taxation under Section 28005 of the Corporations Code and respondent's action was correct.