

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 047

June 27, 1958

ADMINISTRATION EXPENSES: DEDUCTIBILITY BY WIDOW; EXECUTRIX FEES PAID FROM COMMUNITY PROPERTY

Syllabus:

One-half the administration expenses of a deceased husband's estate are deductible by the widow when such expenses relate to the production of taxable income and property held for such purposes, the entire estate was community property, and the wife was named executrix. In such case, the widow as executrix, need include only one-half of her commission in income because the other half was paid from her share of community funds.

Advice is requested whether one-half the administration expenses of the deceased husband's estate, such as court costs, attorneys' fees and executors' commissions, are deductible by the widow. In the instant case it is assumed that the administration expenses in question relate to the production of taxable income or property held for such purpose and, therefore, come within PIT Section 17252 and Regulation 17302.5 which have to do with non business expenses. The entire estate was community property and the wife was named as executrix.

Under the California community property system, upon the husband's death the wife's one-half share of the community property is subject to his debts and to administration, but it is not part of his estate. Income earned by the community property during the period of administration is to be reported one-half by the estate and one-half by the widow. Bishop v Commissioner, 152 F 2d 389; PIT Regulation 18101-06(a)(5). Expenses of administration are to be borne by the entire community property and not solely by the decedent's share. Estate of Coffee, 19C2d 248.

Therefore, if the administration expenses meet the test of deductibility set by Regulation 17302.5 -- i.e., if the production of income or the management or conservation of property held for the production of income is involved in the administration of the estate -- then the deduction should be allowed one-half to the widow. Her property is in administration and one-half the expenses are paid out of it. Community income during administration is taxed one-half to the husband's estate and one-half to the widow, and it is fundamental that where community income is taxed one-half to each spouse, deductions must be similarly divided. Stewart v Commissioner, 95 F 2d 281; Bishop v Commissioner, supra. There is nothing in the wording of Regulation 17302.5 that compels allowance of the deduction only to the estate.

It must be noted, however, that in a case such as the present, where the widow is the

executrix, she need include only one-half her commission in her reported income because the other half was paid out of her share of the community funds. It was so held in the Bishop case. It follows that the item of executrix' commission should be excluded from the total administration expenses before the deduction to the extent of one-half said expenses is taken by the widow.

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