

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 401

January 19, 1977

**BASIS: SURVIVING SPOUSE'S OWN ONE-HALF OF COMMUNITY PROPERTY**

Syllabus:

A question has arisen with respect to the proper computation of basis for the community property interest of a surviving spouse under Revenue and Taxation Code, Section 18045 (e).

Question:

Must the deceased spouse's entire community property interest in all community assets be includible within the decedent's gross estate under Chapter 3 of the Inheritance Tax Law before the surviving spouse's own one-half of the community will acquire a basis of fair market value as of the decedent's date of death?

Answer:

No.

Discussion:

Revenue and Taxation Code, Section 18044 provides that the basis of property acquired from a decedent is fair market value at the time of acquisition by the recipient. Section 18045 amplifies Section 18044 and describes various property interest and transfers that will be deemed to have been acquired or passed from the decedent. Time of acquisition is normally the decedent's date of death. Subdivision (e) of Section 18045 deals with community property. This subdivision provides that the one-half of the community property owned by the surviving spouse will be treated as though it was acquired from the decedent, and thereby entitled to a date of death valuation, if at least one-half of the whole of the community interest in such property was includible in determining the value of the deceased spouse's gross estate under Chapter 3 of the California Inheritance Tax Law. It is clear that the survivor's step-up in basis is predicated upon the subjection of the decedent's half of the community to inheritance tax. But, the law does not require that the decedent's interest in each and every community asset to subject to inheritance tax before the surviving spouse derives any benefit from Section 18045(e). The correct method to compute the surviving spouse's basis in community property is by an asset-by-asset approach. To the extent the decedent's community interest in an asset is subject to inheritance tax, then the surviving spouse's corresponding

community interest in that asset is entitled to a stepped-up basis. The approach has been recognized as logical. See Tax Legal and Practical Problems Arising from the Way in Which Title to Property is Held by Husband and Wife, 1966, So. Calif. Tax Inst. 96. Further, it avoids the harsh result whereby almost all of the decedent's interest in community assets is subject to inheritance tax but because an item of nominal value was not taxed the survivor is denied any and all benefit of Section 18045(e).

The survivor asserting the step-up in basis will have the burden of showing that the decedent's half of the particular community assets were includible in determining the value of the decedent's gross estate under Chapter 3 of the California Inheritance tax Law.