

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
EVELYN I. TINGLEY . }

For Appellant: Warren M. Gordon
Attorney at Law

For Respondent: Bruce W. Walker
Chief Counsel

David M. Hinman
Counsel

OPINION

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Evelyn I. Tingley against a proposed assessment of additional personal income tax in the amount of \$2,749.60 for the year 1967.

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The question presented is whether respondent properly computed appellant's basis in certain real property sold during 1967.

From 1946 until 1966, appellant was married to Wendall Tingley. In 1956 the spouses acquired a parcel of real property located in South Gate, California (hereinafter sometimes referred to as the South Gate property), at a cost of \$7,712. On March 15, 1964, the Tingleys executed a deed of trust on the property to a savings and loan association as security for a \$50,000 note. When appellant and her husband were divorced in 1966, the South Gate property was awarded to appellant as her separate property pursuant to a division of community property set forth in a property settlement agreement. In February 1967 appellant sold the property for \$88,500, and out of the proceeds of the sale she paid off the remaining balance of the trust deed note in the approximate amount of \$42,000.

In computing appellant's gain on this sale, respondent has determined that her basis in the South Gate property was \$10,695, computed as follows: original cost to the community of \$7,712, less prior depreciation of \$2,071, plus commissions and selling expenses of \$5,054. Appellant contends on appeal that her basis should be the fair market value of the property, including the outstanding balance of the trust deed note, on the date she acquired separate title to it pursuant to the divorce proceedings. Whether appellant is entitled to compute her basis in this manner is the issue presented for decision.

Under the general basis provisions of Revenue and Taxation Code section 18041 et seq., respondent has determined that appellant's basis was its original cost, to the community, with certain undisputed adjustments. This determination is, of course, presumptively correct, and appellant has the burden of proving that she should have been allowed a higher basis. (Appeal of Florence L. Cuddy, Cal. St. Bd. of Equal., May 12, 1965.) The thrust of appellant's position appears to be that she "purchased" the South Gate property at the time of the divorce by agreeing to transfer property of equal value to her ex-husband and by becoming obligated to satisfy the trust deed note. Respondent contends, however, that the property settlement agreement did not result in a purchase or other taxable disposition

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of the South Gate property because the spouses were merely making an equal division of their community property. In support of its position, respondent has cited Frances R. Walz, Administratrix, 32 B. T. A. 7 18, and Clifford H. Wren, T. C. Memo., March 11, 1965, which indicate that an equal division of community property is not a taxable event that alters the basis of such property. Since appellant has not denied that she acquired the South Gate property pursuant to an equal division of the spouses' community property, we believe that Walz and Wren are controlling, and that her basis in the property was properly determined to be its adjusted cost to the community.

Finally, although we are not certain that appellant has raised this point on appeal, we note that the original amount of the trust deed note does not constitute a part of the cost of the South Gate property since that indebtedness arose subsequent to the acquisition of the property by appellant and her husband. (See Woodsam Associates v. Commissioner, 198 F. 2d 357.)

For the above reasons, respondent's action in this matter **must be sustained.**

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Evelyn I. Tingley against a proposed assessment of additional personal income tax in the amount of \$2,749.60 for the year 1967, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of April, 1976, by the State Board of Equalization.

Sullivan L. Bennett, Chairman
George E. Kelly, Member
John D. ..., Member
_____, Member
_____, Member

ATTEST: W. W. ..., Executive Secretary