BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
LOUIS (L.M.) HALPER MARITAL TRUST)

Appearances:

For Appellant: David Uzel and Stewart Shane
Certified Public Accountants

For Respondent: Kendall Kinyon
Counsel

O P I N I O N

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 Louis (L.M.) Halper Marital Trust against proposed assessments of additional personal income tax in the amounts of $16,958.70 and $13,825.10 for the fiscal years ended June 30, 1970, and June 30, 1971, respectively.

The issue is whether a surviving wife's one-half share of the community property received a new basis as of the date of her husband's death.

Louis Halper died on March 15, 1967, leaving a will which purported to dispose of all the community property owned by him and his wife. The will directed that Mm. Halper's share of the community property be placed into a trust called 'Trust A. Mrs. Halper was given a life estate in the income of this trust and a testamentary general power of appointment over the corpus. Mr. Halper's share of the community property, on the other hand, was to be distributed as follows. His entire interest in the spouses' homes, automobiles and personal effects was given to Mrs. Halper, and numerous other beneficiaries received specific bequests of money or property, The residue of Mr. Halper's community property was placed into a trust called Trust B. Mrs. Halper received a life estate in the income of this trust, and upon her death the remainder was to pass to a charitable foundation.

Mrs. Halper had elected to take under the will at the time it was drafted, and the estate was ultimately distributed in accordance with its provisions. The report of the inheritance tax appraiser reveals that no inheritance tax was assessed on the transfers to Mrs. Halper. These transfers included a family allowance, the bequest of autos, homes and personal effects, and the interests in Trusts A and B.

During the fiscal years in question, Trust A, appellant herein, sold some of the stocks, bonds and other assets that had been distributed to it under the will. In computing the gain or loss on these sales, appellant used as the basis for each asset its fair market value on the date of Mr. Halper's death. Respondent determined, however, that the basis of each asset was its adjusted cost. This determination resulted in the proposed assessments at issue.

The basis for determining gain or loss on the sale of property is generally the property's adjusted cost. (Rev. & Tax. Code, §§ 18041, 18042.) Property acquired from a decedent, however, may qualify for a new basis equal to its fair market value on the date it is acquired. (Rev. & Tax. Code, § 18044.) Former subdivision (e) of Revenue and Taxation Code section 18045, as it read during 1967, provided that a surviving spouse's share of the community property would be deemed to have been acquired from a decedent, and thus receive a new basis, if:

> ...at least one-half of the whole of the community interest in such property was includible in determining the value of the decedent's gross estate under Chapter 3 of the California Inheritance Tax Law.

In the Estate of Philip Rosenberg, etc., decided by this board on August 19, 1975, and modified on February 2, 1976, we applied former subdivision (e) of section 18045 to a situation similar to that presented here. We pointed out that chapter 3 of the Inheritance Tax Law, and specifically former section 13551 of the Revenue and Taxation Code, describes the circumstances under which community property will or will not be "subject to" the Inheritance Tax Law. 1/ Since former subdivision (e) of section 18045 refers specifically to chapter 3, we held that only community property which is made subject to the Inheritance Tax Law by the provisions of that chapter is includible in determining the value of the decedent's "gross estate under Chapter 3." In the instant case, the assets of Trust A for which a new basis is claimed

1/ At the time of Mr. Halper's death, former section 13551 provided:

> Upon the death of a spouse:
>
> (a) None of the community property transferred to a spouse is subject to this part, except as provided in Section 13694 [dealing with powers of appointment].
>
> (b) All of the decedent's half interest in the community property passing to anyone other than the surviving spouse is subject to this part.

were originally part of Mrs. Halper's share of the spouses' community property. To qualify for a new basis, therefore, at least one-half of the community property must have been subject to the Inheritance Tax Law under chapter 3.

Respondent relies on former section 13551 of the Revenue and Taxation Code, quoted in footnote 1, supra. It argues that at least one-half of the community property will be subject to the Inheritance Tax Law under this section only if the decedent's entire interest in the property (except certain powers of appointment) is transferred to someone other than the surviving spouse. Here Mrs. Halper received some of her husband's share of the community property, namely a life estate in the income of Trust B. 2/ Respondent contends that this transfer was exempt from inheritance tax, and that therefore less than one-half of the community property was subject to the Inheritance Tax Law.

Appellant contends that Mrs. Halper's life estate in Trust B was or should have been subject to the Inheritance Tax Law. Its argument is based on the assumption that former section 13551 exempts only transfers in fee and not transfers of life estates. Section 13551

2/ Aside from her interest in Trust B, Mrs. Halper received a family allowance which was apparently paid out of Mr. Halper's share of the community property, and she also received all of Mr. Halper's interest in the community automobiles, houses and personal effects. Respondent and appellant agree, however, that the determination as to whether at least one-half of the community property was subject to the Inheritance Tax Law should be made on an item-by-item basis. (See Appeal of Estate of Philip Rosenberg, etc., supra, at footnote 2.) They also appear to agree that the stocks, bonds and other assets transferred in trust should be treated as separate items, distinct from the family allowance and the property transferred outright to Mrs. Halper. Accordingly, the outright transfers to Mrs. Halper do not affect the basis of the items transferred in trust.

provided, however, that none of the community property transferred to the surviving spouse would be subject to the Inheritance Tax Law, except certain powers of appointment. Therefore, the transfer of the life estate in Trust B was not subject to the Inheritance Tax Law under former section 13551. (See Marshall, State and Local Taxation, 111 Cal. Practice § 474A.) Estate of Cohen, 4 Cal. 3d 41 [92 Cal. Rptr. 684, 480 P.2d 3001 (1971) is not to the contrary. There the trial court had held that a life estate coupled with a power of appointment was equivalent to a fee interest and therefore not taxable. The Supreme Court held only that the transfer of the power of appointment was subject to tax, even though a transfer in fee would have been exempt, and did not hold or imply that the life estate was also taxable.

Appellant argues in the alternative that the provisions of chapter 3 do not apply at all to the assets of Trust B, because the transfer of community property was a "sale or exchange" in consideration of Mrs. Halper's exercise of the widow's election. Even if this contention is correct, which we doubt, it does not help appellant's case. If none of the assets of Trust B were made subject to the Inheritance Tax Law by the provisions of chapter 3, then the assets of Trust A do not qualify for a new basis under section 18044. (Appeal of Estate of Philip Rosenberg, etc., supra.)

No error has been shown in respondent's treatment of this case. We therefore sustain respondent's action.

O R D E R

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

Appeal of Louis (L.M.) Halper Marital Trust

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 Louis (L.M.) Halper Marital Trust against proposed assessments of additional personal income tax in the amounts, of $16,958.70 and $13,825.10 for the fiscal years ended June 30, 1970, and June 30, 1971, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of April 1977, by the State Board of Equalization.

William M. Bennett, Chairman
George R. Reilly, Member
Richard Nevins, Member
__________, Member
__________, Member

ATTEST: W. W. Dunlop, Executive Secretary