

BEFORE "THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
SARAH C. DORFMAN)

For Appellant: Sarah C. Dorfman, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

James C. Stewart
C o u n s e l

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 Sarah C. Dorfman against proposed assessments of additional personal income tax in the amounts of \$1,943.96 and \$4,077.19 for the years 1969 and 1971, respectively.

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The question presented is whether respondent properly recomputed appellant's basis in stock which was sold in 1969 and 1971.

Appellant's husband died in 1967, leaving an estate composed entirely of the community property owned by appellant and himself. Part of the estate consisted of substantial amounts of Tool Research and Engineering Corporation stock and Rusco Industry stock. Under the terms of her husband's will, appellant was bequeathed all of his property, including his community interest in the stocks mentioned above.

During 1969, 6,527 shares of Tool Research and Engineering stock were sold, apparently by the husband's estate. Appellant's personal income tax return for that year reported one-half of the gain from this sale, and indicated that the estate reported the other half. (See Cal. Admin. Code, tit. 18, reg. 17742-17745(a), subd. (6).) In computing her capital gain, appellant used as her basis the stock's fair market value on the date of her husband's death.

In 1971, appellant sold 7,811 shares of Tool Research and Engineering stock and 5,001 shares of Rusco Industry stock. For purposes of computing the gain on these sales, appellant again used the date of death value as her basis.

Upon auditing appellant's returns, respondent accented appellant's valuation of the stock on the date of her husband's death, but it ruled that only the husband's one-half community interest in the stock was entitled to a new basis equal to its date of death value. Respondent determined that appellant's one-half community interest in the stock retained an adjusted cost basis. This determination led to substantial increases in appellant's reported long-term capital gain and to the deficiency assessments now before us.

The general rule is that the basis of property is its adjusted cost. (Rev. & Tax. Code, §§ 18041 and 18042.) Under Revenue and Taxation Code section 18044, however, the basis of property acquired from a decedent is its fair market value on the date of the decedent's death. For purposes of this rule, a surviving spouse's share of the community property is deemed to have been acquired from a decedent "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

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gross estate under Chapter 3 of the California Inheritance Tax Law." (Rev. & Tax. Code, § 18045, former subd. (e), now subd. (f).)

At the time appellant's husband died, Revenue and Taxation Code section 13551, subdivision (a), provided that, except for certain powers of appointment, none of the community property transferred to a spouse **was** subject to the Inheritance Tax Law. Since appellant's husband transferred all of his community property to her, none of that property was subject to the Inheritance Tax Law and appellant paid no inheritance tax on it. We were faced with this same situation in the Appeal of Estate of Philip Rosenberg, et al. and in the Appeal of Marion Malouf, both of which were decided on August 19, 1975. In those cases we held that, when the decedent's interest in community property is transferred to the surviving spouse, the survivor's share of the community property does not qualify for a new basis under former subdivision (e) of Revenue and Taxation Code section 18045, since none of the community property passing to the surviving spouse was **includible** in determining the value of the decedent's gross estate. Accordingly, the surviving spouse's share of the community property retained a cost basis.

Respondent contends, and we agree, that the rule of Rosenberg and Malouf applies to the present case. It is clear, therefore, that respondent correctly determined that appellant is required to use adjusted cost as the basis of her one-half community interest in the stock. However, since appellant has alleged that respondent improperly computed her basis, **we** have examined respondent's computations, and while we have no reason to question the basis **assigned** to the **Rusco** Industry stock, it does appear that respondent made a slight error in calculating the basis for the Tool Research and Engineering stock. According to our calculations, appellant's basis in the latter should be as follows:

Cost in 1962	\$4.625
12/23/66 - 5% stock dividend	4.405
12/23/67 - 5% stock dividend	4.195
2/26/69 - 3 for 1 stock split	1.40
12/27/70 - 6% stock dividend	1.32

Respondent's error is in assigning a basis of \$1.39 to the stock after the 1969 stock split. The correct basis should be \$1.40 a share for appellant's one-half of the 6,527 shares sold during 1969. With that minor modification, respondent's action in this case will be sustained.

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ORDER,

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

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 Sarah C. Dorfman against proposed assessments of additional personal income tax in the amounts of \$1,943.96 and \$4,077.19 for the years 1969 and 1971, respectively, be and the same is hereby modified in accordance with the views expressed in this opinion. In all other respects, the action of the Franchise Tax Board is hereby sustained.

Done at Sacramento, California, this 26th day of. July , 1978, by the State Board of Equalization.

George R. Rice, Chairman
Robert C. Lee, Member
William B. Smith, Member
James S. Smith, Member
_____, Member