



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ESTATE OF PHILIP ROSENBERG)
DECEASED, ETHEL ROSENBERG,)
EXECUTRIX, AND ETHEL ROSENBERG)

ORDER DENYING PETITION FOR REHEARING
AND MODIFYING OPINION

Upon consideration of the petition filed September 18, 1975, on behalf of the Estate of Philip Rosenberg, Deceased, Ethel Rosenberg, Executrix, and Ethel Rosenberg for rehearing of their appeal from the action of the Franchise Tax Board, we are of the opinion that none of the grounds set forth in the petition constitute cause for the granting thereof and, accordingly, it is hereby ordered that the petition be and the same is hereby denied and that our order of August 19, 1975, be and the same is hereby affirmed.

Good cause appearing therefor, it is also hereby ordered that the final two paragraphs of our opinion in the above entitled matter of August 19, 1975, be deleted and replaced with the following two paragraphs:

The crucial flaw in appellants' position is that subdivision (e) contains a specific reference to Chapter 3 of the California Inheritance Tax Law. Appellants argue, in effect, that the Legislature

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intended community property to be includable in a decedent's gross estate for purposes of subdivision (e) whenever it is so includable under the federal estate tax law. When the Legislature borrowed the federal rule, however, it deleted the reference to the estate tax law, and replaced it with the reference to Chapter 3. Since the Inheritance Tax Law taxes community property 'differently than does the federal estate tax law, we cannot assume that this change was intended to be merely clerical and not substantive. Despite the substantial policy reasons for conforming the California tax law to the federal, therefore, we cannot say that the Legislature intended to incorporate into subdivision (e) the concept of "gross estate" as that term is defined in the federal law.

Finally, we note that respondent's construction of subdivision (e) was apparently adopted in 1956, and was formalized in 1958 with the publication of Franchise Tax Board. Legal Ruling 182. It has been discussed without adverse comment by some of the writers on California Tax Law. (See, e.g., Marshall, State and Local Taxation, 12 Cal. Practice, § 585B(a).) While not controlling, the contemporaneous administrative construction of a statute is entitled to great weight, and generally will not be overturned unless clearly erroneous or unauthorized. (Coca-Cola Co. v. State Bd. of Equalization, 25 Cal. 2d 918, 921 [156 P. 2d 1]; Select Base Materials v. Board of Equal., 51 Cal. 2d 640, 647 [1335 P. 2d 672].) While some doubt has been cast on respondent's construction of subdivision (e), we are not persuaded that that construction is clearly erroneous. Accordingly, we sustain respondent's action.

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Done at Sacramento, California, this 2nd day of
February, 1976, by the State Board of Equalization.

Sullivan B. Bergquist, Chairman
George R. Hickey, Member
Paul H. Davis, Member
_____, Member
_____, Member

ATTEST: *W. W. Dunlop*, Executive Secretary