4 T.C. 588 (1945)

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In California, during the administration of a deceased spouse's estate, the surviving spouse cannot deduct one-half of the loss from the sale of community property acquired after 1927; the entire loss is deductible by the estate.

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Summary

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This case addresses whether a surviving spouse in California can deduct one-half of the loss sustained from the sale of community property during the administration of her deceased husband's estate. The Tax Court held that the entire loss is deductible by the estate, not split between the estate and the surviving spouse. The court reasoned that during estate administration, the estate controls the community property, and therefore, the estate is responsible for reporting the income or losses. This decision impacts how community property is treated for tax purposes during estate administration in California.

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Facts

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Stella and Roy Bishop, residents of California, acquired securities as community property after July 29, 1927. Roy Bishop died on December 20, 1938. Stella and Crocker First National Bank were named as executrix and executor of Roy's estate, respectively. During the administration of the estate, the securities were sold at a loss. Stella Bishop attempted to deduct one-half of the loss on her individual income tax return, along with one-half of the estate taxes and expenses, and only reported one-half of the executrix fee she received. The Commissioner of Internal Revenue disallowed these deductions and adjustments.

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Procedural History

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The Commissioner of Internal Revenue determined a deficiency in Stella Bishop's income tax for 1940. Bishop petitioned the Tax Court, contesting the Commissioner's denial of her claimed deductions and adjustments related to the community property and executrix fee. The Tax Court reviewed the facts and relevant California law to determine the proper tax treatment.

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Issue(s)

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Whether the surviving spouse can deduct one-half of the loss sustained upon the sale of community property acquired after 1927 in California during the administration of the deceased spouse's estate.

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Holding

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No, because during the period of estate administration, the entire community estate is subject to administration and control by the executor; therefore, the estate must take the entire deduction for the loss.

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Court's Reasoning

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The Tax Court relied on the Ninth Circuit's decision in *Commissioner v. Larson, 131 F.2d 85*, which involved a similar Washington statute. The court in *Larson* concluded that because the entire estate was subject to administration, the income was

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