

TAXES

Probate can mean that all different types of taxes are due: income taxes, property taxes, and, of course, death taxes. The latter, federal and state estate taxes, come into play when the net estate exceeds the federal exclusion amount (see page 11-3). "Net" means the value of the estate after deducting for mortgages, attorney's fees, court costs, funeral expenses, and so forth. The federal estate tax return, form 706, is a detailed report on a decedent's estate, including both probatable and non-probatable assets. Since the IRS typically checks every estate for which a 706 is filed, but audits can delay the closing of an estate, it is wise to request an early audit whenever a 706 is filed. The IRS, then, has one year to do the audit or it's waived.

Prior to June 8, 1982, California required the filing of an inheritance tax return, known as an IT-22 (plus the IT-3 for marital property). The inheritance tax, which was repealed by the voters on that day with the passage of Proposition 6, was fixed by the probate referee (then called Inheritance Tax Referees). The schedule of tax, which varied according to an individual's relationship to the decedent, was slowly eroded over the years, until it was finally eliminated. In its place, an estate tax (for state purposes) was enacted as a credit against the federal estate tax. Since the federal 706 allows a credit against any state estate taxes paid, California decided to "pick up" the deduction in the form of an estate tax; hence, the common term, the "pick-up tax". The pickup tax has since been eliminated.

Once the referee has calculated the tax and determined how much each heir must pay out of his or her inheritance, the report of tax referee is mailed to the attorney. The attorney has ten days to object once the report is filed with the court, so it's important to review it carefully. Many referee's will send a pre-report to the attorney so as to give the attorney a little more time to review it before it's filed with the court.

Since every estate is potentially an income producing entity, it is generally necessary for the estate to obtain a federal tax identification number. This can be obtained over the phone by calling the IRS (locally in Fresno). However, prior to making the call, it is necessary to fill out form SS-4 and have it ready to read the information to the agent. A number will be provided at that time, and the form can be faxed or mailed to the IRS. It is also necessary to pick a fiscal year for the estate (no later than eleven months from the month in which the decedent died), and the estate's income taxes (form 1041 for federal and 541 for state) are due three and a half months after the end of the fiscal year. In addition, it will probably be necessary to file the decedent's final income tax return for the year in which he or she died (along with the state return).

If a return can't be prepared in time for any particular deadline, it is wise (read "malpractice") to pay the anticipated tax so as to stop any interest and penalties. If a late return is to be filed, apply for an extension. Even if no tax is paid, at least the penalties will be avoided. However, the executor may be opening himself up for a surcharge if interest is added on.

Estate taxes are due nine months from the date of death. Since this can come up rather quickly, it's important for the estate attorney to keep the executor aware of this fact. Unless the estate attorney is a tax expert, hire a CPA knowledgeable in estate taxes to prepare the returns. If the CPA is not familiar with estate tax returns, it may be necessary to advise him/her of that an alternative valuation date is available in some situations. This alternative means that the executor can choose to have the estate property (ALL, that is) valued at either the date of death or six months later. It cannot be used if the executor disposed of some property during the six months prior to the request. This can be useful if the property has depreciated following the decedent's death from other than natural causes. For example, if the stock market crashed or there was a fire, the alternate valuation may be quite useful.

Valuation and basis can be important when dealing with assets that have appreciated over the years. Property held in joint tenancy form by spouses can be troublesome when determining basis because the IRS will allow a stepped up basis as to only one-half of the value when the first spouse dies. On the death of the surviving spouse, the other half is stepped up to the value at that time. This gives the property two different bases. If the heirs then sell the property, there may be a capital gains tax on the half that was attributed to the first spouse. On the other hand, if property is held as "community property", the asset is stepped up in basis twice: once on the death of the first spouse, and then again when the survivor dies.

Reduction of one's estate prior to death (in order to avoid estate taxes) is an important part of estate planning. One frequently used technique is to give part of your estate away during your lifetime (usually to children, but also to charity). Under federal law, a person can give up to \$13,000 per year to an individual without paying any gift tax or filing a return. The gift tax is the flip side of the estate tax, and it's purpose is to keep people from giving their property away just prior to death (in order to avoid estate taxes). However, the annual gift tax exclusion allows a married couple to give their married children up to \$52,000 each per year! Over a ten year period, this can add up to quite a bit of money.

Additional estate deductions have been enacted recently, but anyone desiring to reduce or eliminate their estate taxes should seek competent estate planning advice on a regular basis.

**TABLE OF UNIFIED CREDITS UNDER THE ECONOMIC GROWTH AND TAX
RELIEF RECONCILIATION ACT OF 2001 (signed into law on June 7, 2001)
AND MORE RECENT LAWS ENACTED IN JANUARY, 2011**

<u>Year of Death or Gift</u>	<u>Applicable Credit Amount</u>	<u>Applicable Exclusion Amount</u>
2001	\$220,550	\$675,000
2002	\$345,800	\$1,000,000
2003	\$345,800	\$1,000,000
2004	\$555,800	\$1,500,000
2005	\$555,800	\$1,500,000
2006	\$780,800	\$2,000,000
2007	\$780,800	\$2,000,000
2008	\$780,800	\$2,000,000
2009	\$1,455,800	\$3,500,000
2010	\$0	\$0
2011		\$5,000,000
2012		\$5,000,000
2013	unknown!	unknown!

CHANGE IN OWNERSHIP STATEMENT DEATH OF REAL PROPERTY OWNER

This notice is a request for a completed Change in Ownership Statement. Failure to file this statement will result in the assessment of a penalty.

NAME AND MAILING ADDRESS
(Make necessary corrections to the printed name and mailing address)

[] []
[] []

Section 480(b) of the Revenue and Taxation Code requires that the personal representative file this statement with the Assessor in each county where the decedent owned property at the time of death. **File a separate statement for each parcel of real property owned by the decedent.**

NAME OF DECEDENT _____ DATE OF DEATH _____

YES NO Did the decedent have an interest in real property in this county? If YES, answer all questions. If NO, sign and complete the certification on page 2.

STREET ADDRESS OF REAL PROPERTY _____ CITY _____ ZIP CODE _____ ASSESSOR'S PARCEL NUMBER (APN) _____

DESCRIPTIVE INFORMATION (IF APN UNKNOWN)
 Copy of deed by which decedent acquired title is attached.
 Copy of decedent's most recent tax bill is attached.
 Deed or tax bill is not available; legal description is attached.

DISPOSITION OF REAL PROPERTY
 Succession without a will Decree of distribution pursuant to will
 Probate Code 13650 distribution Action of trustee pursuant to terms of a trust
 Affidavit of death of joint tenant

TRANSFER INFORMATION Check all that apply and list details below.

- Decedent's spouse Decedent's registered domestic partner
- Decedent's child(ren) or parent(s.) If qualified for exclusion from assessment, a *Claim for Reassessment Exclusion for Transfer Between Parent and Child* must be filed (see instructions.)
- Decedent's grandchild(ren.) If qualified for exclusion from assessment, a *Claim for Reassessment Exclusion for Transfer from Grandparent to Grandchild* must be filed (see instructions.)
- Other beneficiaries.
- A trust.

NAME OF TRUSTEE _____ ADDRESS OF TRUSTEE _____

List names and percentage of ownership of all beneficiaries:

NAME OF BENEFICIARY	RELATIONSHIP TO DECEDENT	PERCENT OF OWNERSHIP RECEIVED

This property has been or will be sold prior to distribution. (Attach the conveyance document and/or court order.)

CONTINUED ON PAGE 2

THIS DOCUMENT IS NOT SUBJECT TO PUBLIC INSPECTION

YES NO Will the decree of distribution include distribution of an ownership interest in any legal entity that owns real property in this county? If YES, will the distribution result in any person or legal entity obtaining control of more than 50% of the ownership of that legal entity? YES NO If YES, complete the following section.

NAME AND ADDRESS OF LEGAL ENTITY	NAME OF PERSON OR ENTITY GAINING SUCH CONTROL
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YES NO Was the decedent the lessor or lessee in a lease that had an original term of 35 years or more, including renewal options? If YES, provide the names and addresses of all other parties to the lease.

NAME	MAILING ADDRESS	CITY	STATE	ZIP CODE

MAILING ADDRESS FOR FUTURE PROPERTY TAX STATEMENTS

ADDRESS	CITY	STATE	ZIP CODE
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CERTIFICATION

I certify (or declare) under penalty of perjury under the laws of the State of California that the information contained herein is true, correct and complete to the best of my knowledge and belief.

SIGNATURE OF PERSONAL REPRESENTATIVE	PRINTED NAME OF PERSONAL REPRESENTATIVE
TITLE	DATE
E-MAIL ADDRESS	DAYTIME TELEPHONE
	()

INSTRUCTIONS

Failure to file a Change in Ownership Statement within the time prescribed by law may result in a penalty of either \$100 or 10% of the taxes applicable to the new base year value of the real property or manufactured home, whichever is greater, but not to exceed \$2,500 if that failure to file was not willful. This penalty will be added to the assessment roll and shall be collected like any other delinquent property taxes and subjected to the same penalties for nonpayment.

Section 480 of the Revenue and Taxation Code states, in part:

- (a) Whenever there occurs any change in ownership of real property or of a manufactured home that is subject to local property taxation and is assessed by the county assessor, the transferee shall file a signed change in ownership statement in the county where the real property or manufactured home is located, as provided for in subdivision (c). In the case of a change in ownership where the transferee is not locally assessed, no change in ownership statement is required.
- (b) The personal representative shall file a change in ownership statement with the county recorder or assessor in each county in which the decedent owned real property at the time of death that is subject to probate proceedings. The statement shall be filed prior to or at the time the inventory and appraisal is filed with the court clerk. In all other cases in which an interest in real property is transferred by reason of death, including a transfer through the medium of a trust, the change in ownership statement or statements shall be filed by the trustee (if the property was held in trust) or the transferee with the county recorder or assessor in each county in which the decedent owned an interest in real property within 150 days after the date of death.

The above requested information is required by law. Please reference the following:

- **Passage of Decedent's Property:** Beneficial interest passes to the decedent's heirs effectively on the decedent's date of death. However, a document must be recorded to vest title in the heirs. An attorney should be consulted to discuss the specific facts of your situation.
- **Change in Ownership:** California Code of Regulations, Title 18, Rule 462.260(c), states in part that "[i]nheritance (by will or intestate succession)" shall be "the date of death of decedent."
- **Inventory and Appraisal:** Probate Code, Section 8800, states in part, "Concurrent with the filing of the inventory and appraisal pursuant to this section, the personal representative shall also file a certification that the requirements of Section 480 of the Revenue and Taxation Code either:
 - (1) Are not applicable because the decedent owned no real property in California at the time of death
 - (2) Have been satisfied by the filing of a change in ownership statement with the county recorder or assessor of each county in California in which the decedent owned property at the time of death."
- **Parent/Child and Grandparent/Grandchild Exclusions:** A claim must be filed within three years after the date of death/transfer, but prior to the date of transfer to a third party; or within six months after the date of mailing of a Notice of Assessed Value Change, issued as a result of the transfer of property for which the claim is filed. An application may be obtained by calling XXX-XXX-XXXX.

This statement will remain confidential as required by Revenue and Taxation Code Section 481, which states in part: "These statements are not public documents and are not open to inspection, except as provided by Section 408."

CLAIM FOR REASSESSMENT EXCLUSION FOR TRANSFER BETWEEN PARENT AND CHILD

NAME AND MAILING ADDRESS

(Make necessary corrections to the printed name and mailing address.)

A. PROPERTY

ASSESSOR'S PARCEL NUMBER _____

PROPERTY ADDRESS _____

CITY _____

RECORDER'S DOCUMENT NUMBER _____

DATE OF PURCHASE OR TRANSFER _____

PROBATE NUMBER (if applicable) _____

DATE OF DEATH (if applicable) _____

DATE OF DECREE OF DISTRIBUTION (if applicable) _____

The disclosure of social security numbers is mandatory as required by Revenue and Taxation Code section 63.1. [See Title 42 United States Code, section 405(c)(2)(C)(i) which authorizes the use of social security numbers for identification purposes in the administration of any tax.] A foreign national who cannot obtain a social security number may provide a tax identification number issued by the Internal Revenue Service. The numbers are used by the Assessor and the state to monitor the exclusion limit.

B. TRANSFEROR(S)/SELLER(S) (additional transferors please complete "B" on the reverse)

1. Print full name(s) of transferor(s) _____
2. Social security number(s) _____
3. Family relationship(s) to transferee(s) _____
If adopted, age at time of adoption _____
4. Was this property the transferor's principal residence? Yes No
If **yes**, please check which of the following exemptions was granted or was eligible to be granted on this property:
 Homeowners' Exemption Disabled Veterans' Exemption
5. Have there been other properties that qualified for this exclusion? Yes No
If **yes**, please attach a list of all previous transfers that qualify for this exclusion. (This list should include for each property: the County, Assessor's parcel number, address, date of transfer, names of all the transferees/buyers, and family relationship. Transferor's principal residence must be identified.)
6. Was only a partial interest in the property transferred? Yes No If **yes**, percentage transferred _____ %
7. Was this property owned in joint tenancy? Yes No
8. If the transfer was through the medium of a trust, you **must** attach a copy of the trust.

CERTIFICATION

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing and all information hereon, including any accompanying statements or documents, is true and correct to the best of my knowledge and that I am the parent or child (or transferor's legal representative) of the transferees listed in Section C. I knowingly am granting this exclusion and will not file a claim to transfer the base year value of my principal residence under Revenue and Taxation Code section 69.5.

SIGNATURE OF TRANSFEROR OR LEGAL REPRESENTATIVE	DATE
SIGNATURE OF TRANSFEROR OR LEGAL REPRESENTATIVE	DATE
MAILING ADDRESS	DAYTIME PHONE NUMBER ()
CITY, STATE, ZIP	E-MAIL ADDRESS

(Please complete applicable information on reverse side.)

THIS DOCUMENT IS NOT SUBJECT TO PUBLIC INSPECTION

C. TRANSFEREE(S)/BUYER(S) (additional transferees please complete "C" below)

1. Print full name(s) of transferee(s) _____
2. Family relationship(s) to transferor(s) _____
 If adopted, age at time of adoption _____
 If stepparent/stepchild relationship is involved, was parent still married to or in a registered domestic partnership (*registered means registered with the California Secretary of State*) with stepparent on the date of purchase or transfer? Yes No
 If no, was the marriage or registered domestic partnership terminated by: Death Divorce/Termination of partnership
 If terminated by death, had the surviving stepparent remarried or entered into a registered domestic partnership as of the date of purchase or transfer? Yes No
 If in-law relationship is involved, was the son-in-law or daughter-in-law still married to or in a registered domestic partnership with the daughter or son on the date of purchase or transfer? Yes No
 If no, was the marriage or registered domestic partnership terminated by: Death Divorce/Termination of partnership
 If terminated by death, had the surviving son-in-law or daughter-in-law remarried or entered into a registered domestic partnership as of the date of purchase or transfer? Yes No
3. ALLOCATION OF EXCLUSION (If the full cash value of the real property transferred exceeds the one million dollar value exclusion, the transferee must specify on an attachment to this claim the amount and allocation of the exclusion that is being sought.)

CERTIFICATION

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing and all information hereon, including any accompanying statements or documents, is true and correct to the best of my knowledge and that I am the parent or child (or transferee's legal representative) of the transferors listed in Section B; and that all of the transferees are eligible transferees within the meaning of section 63.1 of the Revenue and Taxation Code.

SIGNATURE OF TRANSFEREE OR LEGAL REPRESENTATIVE ▶	DATE
SIGNATURE OF TRANSFEREE OR LEGAL REPRESENTATIVE ▶	DATE
MAILING ADDRESS	DAYTIME PHONE NUMBER ()
CITY, STATE, ZIP	E-MAIL ADDRESS

Note: The Assessor may contact you for additional information.

B. ADDITIONAL TRANSFEROR(S)/SELLER(S) (continued)

NAME	SOCIAL SECURITY NUMBER	SIGNATURE	RELATIONSHIP

C. ADDITIONAL TRANSFEREE(S)/BUYER(S) (continued)

NAME	RELATIONSHIP

CLAIM FOR REASSESSMENT EXCLUSION FOR TRANSFER BETWEEN PARENT AND CHILD
Revenue and Taxation Code, Section 63.1

IMPORTANT: In order to qualify for this exclusion, a claim form must be completed and signed by the transferors and a transferee and filed with the Assessor. A claim form is timely filed if it is filed within three years after the date of purchase or transfer, or prior to the transfer of the real property to a third party, whichever is earlier. If a claim form has not been filed by the date specified in the preceding sentence, it will be timely if filed within six months after the date of mailing of a notice of supplemental or escape assessment for this property. If a claim is not timely filed, the exclusion will be granted beginning with the calendar year in which you file your claim. Complete all of Sections A, B, and C and answer each question or your claim may be denied. Proof of eligibility, including a copy of the transfer document, trust, or will, may be required. **Please note:**

1. This exclusion only applies to transfers that occur on or after November 6, 1986;
2. In order to qualify, the real property must be transferred from parents to their children or children to their parents;
3. If you do not complete and return this form, it may result in this property being reassessed.
4. California law provides, with certain limitations, that a "change in ownership" does not include the purchase or transfer of:
 - The principal residence between parents and children, and/or
 - The first \$1,000,000 of other real property between parents and children.

NOTE: Effective January 1, 2009, Revenue and Taxation Code Section 63.1(j) allows a county board of supervisors to authorize a one-time processing fee of not more than \$175 to recover costs incurred by the county assessor due to the failure of an eligible transferee to file a claim for the parent-child change in ownership exclusion after two written requests have been sent to an eligible transferee by the county assessor.