

(916) 323-7712

May 13, 1982

This is in response to the material you recently sent to Redacted regarding the estate of Redacted. According to the facts set forth in your correspondence, Redacted died on February 15, 1979. You, as executor of the estate, paid secured tax bills for 1978-1979 and 1979-80 on the estate real property. On May 12, 1980, the estate real property was sold, and the proceeds were distributed to the beneficiaries. On April 18, 1982, you received an unsecured tax bill for escape assessments on the estate property for 1979-80 and 1980-81. You ask whether these tax bills for escape assessments for 1979-80 and 1980-81 are proper.

As you are aware, Proposition 13 was adopted by the voters in June 6, 1978. This Proposition added Article XIII A to the California Constitution which provides, in part, that all real property shall be appraised at its 1975 base year value, unless there has been a subsequent change in ownership of the property or new construction has occurred. In this regard, Property Tax Rule 462 (n) (3) (Title 18 of the California Administrative Code) provides that the date a change in ownership occurs for a transfer of real property resulting from an inheritance (by will or intestate succession) is the date of death of the decedent.

In adopting this provision of the Rule, the Board relied on California statutes and established case law. In this regard, the California Probate Code, section 300 provides as follows:

When a person dies, the title to his property, real and personal, passes to the person to whom it is devised or bequeathed by his last will or, in the absence of such disposition, to the persons who succeed to his estate as provided in Division II of this code (Succession); but all of his property shall be subject to the possession of the executor or administrator and to the control of the superior court for the purposes of administration, sale or other disposition under the provisions of Division III of this code [Administration of Estates of Decedents], and shall be chargeable with the expenses of administering his estate, and the payment of his debts and the allowance to the family, except as otherwise provided in this code.

Furthermore, long-established case law has held that the title of heirs, devisees, and legatees to estate property vests in them on the decedent's death. (State v. Miller (1906) 149 Cal. 208; Krey Estate (1960) 183 Cal.App. 2d 312; Dorland v. Dorland (1960) 178 Cal.App. 2d 664; see generally 24 Cal.Jur. 3d, Decedents Estates, §46; 25 Cal. Jur. 3d, Decedents Estates, §919.) Title does not originate in the decree of distribution but is merely confirmed by the decree. (Estate of Yorba (1917) 176 Cal. 166)

Based on the foregoing, the estate property should have been appraised for the 1979-80 fiscal year at its full cash value as of the March 1, 1979, lien date: for the 1980-81 fiscal year, this 1979 base year value should have been adjusted by the 2% inflationary rate. Since the estate property was sold on May 12, 1980 (after the 1980 lien date), another change in ownership occurred and a 1981 base year value should be reflected in the 1981-82 tax bill to the purchasers.

Since you do not so state in your correspondence, I will assume that a change in ownership statement was not filed by you with the assessor after Redacted's death in 1979, pursuant to Sections 480 et. seq. of the Revenue and Taxation Code. Therefore, the assessor was probably unaware of the death which triggered the change in ownership. Upon discovery, the assessor properly made escape assessments pursuant to Section 531.2 of the Revenue and Taxation Code, which provides in relevant part:

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If the real property escaped assessment as a result of an unrecorded change in ownership or change in control for which a change in ownership statement required by Section 480, 480.1, or 480.2 is not filed, the assessor shall appraise the property as of the date of transfer and enroll the difference in taxable value for each of the subsequent years on the secured roll, with the date of entry specified thereon, provided, however, that if prior to the date of such assessment the property has (1) been transferred or conveyed to a bona fide purchaser for value, or (2) become subject to a lien of a bona fide encumbrance for value, the escape assessment pursuant to this paragraph shall not create or impose a lien or charge on that real property but shall be entered on the unsecured roll in the name of the person who would have been the assessee in the year in which it escaped assessment and shall thereafter be treated and collected other taxes on said roll. The tax rate applicable shall be the secured rate of the year in which the property escaped assessment. Notwithstanding the provisions of Section 532, escaped assessments resulting from such unrecorded changes in ownership or change in control shall be made within eight years after July 1 of the assessment year in which the real property escaped taxation or was underassessed. (Emphasis added.)

In conclusion, it is our opinion that the escape assessments were proper for the 1979-80 and 1980-81 tax years, since a change in ownership occurred with respect to the estate property when Redacted died on February 15, 1979. Pursuant to Probate Code, Section 300, the beneficiaries were considered to be owners of such property from that date to the date of sale on May 12, 1980, and they were the proper assesseees in the years that the property escaped assessment. Since the estate has been distributed, technically the tax bills, should have been sent directly to the beneficiaries, rather than to you, as executor. In any event, we are of the opinion that assessee name changes can be corrected pursuant to either Section 1613 or 4831 of the Revenue and Taxation Code.

You also ask whether the buyers of the property should be liable for a portion of the 1980-1981 escape assessments. Since the beneficiaries were the owners of the property on the March 1, 1980, lien date, they were the proper assesseees for that year. However, if the contract of sale provides for a proration of property taxes, it is possible that they are liable for a portion of the 1980-81 taxes on the escape assessment. This, however, is a matter of contract law, not property tax law.

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Lastly, it should be noted, that we are unable to make any determination with respect to whether the amount of the escape assessments are proper. If you believe that they are not, we advise you to pursue your assessment appeal.

I trust the foregoing is responsive to your inquiry. If we may be of further assistance to you in this matter, please do not hesitate to contact this office.

Very truly yours,

Margaret S. Shedd  
Tax Counsel

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