

Memorandum



625.0050

To : Mr. Verne Walton

Date : June 10, 1988

From : Eric F. Eisenlauer

Eric F. Eisenlauer

Subject : Proposition 58 - Estates

This is in response to your memorandum of May 25, 1988 to Mr. Richard Ochsner in which you request our opinion regarding the applicability of Proposition 58 and Revenue and Taxation Code* section 63.1 to the following facts.

Decedent died May 17, 1987. The major asset of decedent's estate is close corporation stock which, under the provisions of decedent's will, is distributable in equal shares to his three children. The corporation owns real property with an assessed value exceeding \$4 million. The attorneys for the executors of the estate are considering liquidation of the corporation and recognize that doing so after the estate is distributed would not be considered a transfer between a parent and children. They ask, however, whether the transferee children of the decedent would be entitled to the \$1 million exclusion under Proposition 58 and Revenue and Taxation Code section 63.1 if the corporation is liquidated prior to distribution. Essentially, the issue raised is whether liquidation of the corporation prior to distribution of the estate results in a transfer of real property between decedent and his children.

Probate Code section 300 provides:

When a person dies, the title to the person's property, real and personal, passes to the person to whom it is devised or bequeathed by the decedent's last will, or, in the absence of such disposition, to the persons who succeed to the decedent's estate as provided in Part 2 (commencing with Section 6400) of Division 6; but all of the decedent's property is 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 this code, and is chargeable with the expenses

*All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

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of administering the decedent's estate, and the payment of the decedent's debts and the family allowance, except as otherwise provided in this code.

Further, long established case law also holds that the title of heirs, devisees and legatee to estate property vests in them on decedent's death. (State v. Miller (1906) 149 Cal. 208; Dorland v. Dorland (1960) 178 Cal.App.2d 664; see generally 24 Cal.Jur. 3d, Decedent's Estates, § 46; 25 Cal.Jur. 3d, Decedents Estates, § 910). Title does not originate in the decree of distribution but is merely confirmed by the decree (Estate of Yorba (1917) 176 Cal. 166). See also, California Academy of Sciences v. County of Fresno (1987) 192 Cal.App.3d 1436.

It is clear from the foregoing that when decedent died, title to his stock passed to his three children subject to administration. Liquidation of the corporation and distribution of the real property received therefrom would not change that result. Accordingly, any liquidation of the corporation whether before or after the estate is distributed would result in a transfer from the corporation to the shareholders and not a transfer from decedent and would not, in our opinion, be excluded from change in ownership under Proposition 58 and section 63.1 (Letter to County Assessors dated September 11, 1987, No. 87/72, Q. 6). Such a transfer would, therefore, constitute a change in ownership of the real property transferred under section 61(i) unless the provisions of section 62(a)(2) are applicable.

Also, since stock does not constitute real property for purposes of Proposition 58 and section 63.1 (section 63.1(c)(6)), any change in ownership resulting from decedent's transfer of stock to his children at the time of his death (see sections 64(a)(c) and (d)) would not be excluded from change in ownership under Proposition 58 and section 63.1.

If you have further questions concerning this matter, please let us know.

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cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson