

# California Inheritance and Gift Taxes

## A Summary

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The initial California inheritance tax law was enacted in 1893.<sup>1</sup> This, however, imposed a tax only on inheritance by so-called "collateral" relatives as distinguished from "direct" relatives. The latter group consisted of: father, mother, husband, wife, lawful issue, lineal descendants born in lawful wedlock, adopted child, brother, sister, wife or widow of a son and husband of a daughter. Any estate valued at less than \$500 was exempt.

In 1897,<sup>2</sup> resident nieces and nephews were added to the list of direct relatives, but in 1899<sup>3</sup> such nephews and nieces and brothers and sisters were taken out of the list of direct relatives.

The Inheritance Tax Act of 1905<sup>4</sup> is the basic statute for the inheritance tax as it now exists in California. This was a complete revision of the subject and applied the tax on transfers to direct as well as to collateral relatives. It would appear that the enactment was modeled on the New York statute.<sup>5</sup>

### THE PRESENT INHERITANCE TAX LAW

The California Inheritance Tax is a tax upon the right to succeed to property rather than upon the property itself<sup>6</sup> and, accordingly, the amount of tax assessment will vary according to the relationships to the decedent of the beneficiaries or distributees. Generally, the closer the relationship, the larger the exemption and the smaller the rate of tax.

#### *A. Tax Computation*

The rates are graduated upwards and, for the purpose of the tax computation, the share passing to each beneficiary is divided into tax brackets and the rates applied progressively to each bracket. The exemption is included as part of the first tax bracket.<sup>7</sup> For example, an adult son receives

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<sup>1</sup> Cal. Stats. 1893, c.168, effective March 23, 1893.

<sup>2</sup> Cal. Stats. 1897, c.83.

<sup>3</sup> Cal. Stats. 1899, c.85.

<sup>4</sup> Cal. Stats. 1905, c.314.

<sup>5</sup> *McDougald v. Lilienthal*, 174 Cal. 698, 164 Pac. 387 (1917).

<sup>6</sup> *Estate of Bloom*, 213 Cal. 575, 2 P.2d 753 (1931).

<sup>7</sup> *Estate of Harrison*, 110 Cal.App.2d 717, 243 P.2d 528 (1952).

a net bequest of \$51,000 under his father's will. His tax would be computed as follows:

\$ 5,000.	Exempt
20,000. @ 2%	\$ 400.00
25,000. @ 3%	750.00
1,000. @ 4%	40.00
<u>\$51,000.</u>	<u>\$1,190.00</u> Total tax

In the computation of the tax, assignments and renunciations by the distributees are generally ignored.<sup>8</sup> Although the inheritance tax law provides, in Section 13411 of the Revenue and Taxation Code, that a transfer subject to a contingency is to be taxed at the highest rate as if the contingency had occurred, as a practical matter, almost all cases wherein a condition or contingency may affect the tax computation are compromised with the state.<sup>9</sup> The other alternative would involve bonding, as described in Sections 14171-14178 of the Revenue and Taxation Code, against the tax computed at the highest rate, a rather cumbersome procedure.

### B. The "Pick-up" Tax

California levies a death tax in addition to the inheritance tax in order to take up the unused portion of the credit allowed by the federal estate tax law for state death taxes paid.<sup>10</sup> Some difficulty is apparent when the decedent had property in other states subject to the other state's inheritance tax. In such a case, the present practice is to assess a tax, under the Revenue and Taxation Code, Section 13441, only in an estate where the California inheritance tax is less than that proportion of the total 80% credit which the California estate bears to the decedent's whole estate.

Prior to September 22, 1951, the delinquency date on the so-called "pick-up tax" was 30 days after the final determination of the federal tax. This provision was repealed<sup>11</sup> and there is now only one delinquency date, namely, at the expiration of two years from the date of death.<sup>12</sup> The Inheritance Tax Department will still apply the old law in estates of decedents dying prior to September 22, 1951.

The inheritance tax being a privilege tax, that is, a tax on the privilege of transmitting property at death, it is not subject to the usual constitutional limitations, either state or federal, on other forms of taxation. Some examples of that may be found in the holdings that the equal protection

<sup>8</sup> CAL. REV. & TAX. CODE §§ 13409, 13410. An exception to this rule is found in §§ 13695-13698.

<sup>9</sup> *Id.* §§ 14191, 14192.

<sup>10</sup> *Id.* §§ 13441, 13442.

<sup>11</sup> Cal. Stats. 1951, p.3410, in effect September 22, 1951.

<sup>12</sup> CAL. REV. & TAX. CODE §§ 14102, 14103.

and due process clauses of the Fourteenth Amendment do not prohibit a state from deciding whether or not to allow the federal estate tax as a deduction in the computation of the state inheritance tax,<sup>13</sup> from discriminating between domestic and foreign charitable corporations in the matter of exemptions,<sup>14</sup> nor prohibit a state from taxing the transfer of intangible personal property owned by a resident decedent, although the evidence of such ownership is physically located outside of the state.<sup>15</sup>

It has also been held that provisions of the California constitution concerning property taxes are not applicable to the inheritance tax.<sup>16</sup>

### C. *Transfers Subject to Tax*

#### I. *Community Property*

Beginning with the Act of 1905, the transfer of community property from the husband to the wife was subject to the tax. Until 1917 the entire amount was taxable, but in 1917 the legislature exempted one-half thereof from tax. There has never been a tax imposed on the transfer of community property from the wife to the husband.

##### A. Death of husband

The one-half of the community property passing to the wife under Section 201 of the Probate Code is excluded from the tax.<sup>17</sup> If the husband forces the wife to elect and she elects to take under his will, the property so taken, up to one-half of the total community property, will be excluded.<sup>18</sup>

Property under Section 201.5 of the Probate Code is treated in the same manner as true community property.<sup>19</sup> Other transfers of community property receive a different treatment.<sup>20</sup> One-half of the property *received* by the wife is then exempt.

In computing the amount of the community exclusion, the ordinary debts, administration expenses, etc., are deducted from the gross community property and one-half of what remains is the exclusion.<sup>21</sup>

In the case of pre-1927 community property, the federal estate tax will be treated as an ordinary expense of administration.<sup>22</sup>

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<sup>13</sup> *Stebbins v. Riley*, 268 U.S. 137 (1925).

<sup>14</sup> *Board of Education v. Illinois*, 203 U.S. 553 (1906).

<sup>15</sup> *Estate of Hodges*, 170 Cal. 492, 150 Pac. 344 (1915). See also *Estate of Newton*, 35 Cal.2d 830, 221 P.2d 952 (1950).

<sup>16</sup> *Estate of Watkinson*, 191 Cal. 591, 217 Pac. 1073 (1923); *In re Wilmerding*, 117 Cal. 281, 49 Pac. 181 (1897).

<sup>17</sup> CAL. REV. & TAX. CODE § 13551.

<sup>18</sup> *Id.* § 13552.

<sup>19</sup> *Id.* § 13555.

<sup>20</sup> *Id.* § 13554; *cf. Kirkwood v. Bank of America*, 43 A.C. 335, 273 P.2d 532 (1954).

<sup>21</sup> *Estate of Coffee*, 19 Cal.2d 248, 120 P.2d 621 (1941).

<sup>22</sup> *Estate of Cushing*, 113 Cal.App.2d 319, 248 P.2d 482 (1952); *Estate of Atwell*, 85 Cal. App.2d 454, 193 P.2d 519 (1948).

In the case of post-1927 community property, however, all of the federal estate tax will be deducted from the husband's share of the community property.<sup>23</sup>

### B. Death of wife

By statutory provisions<sup>24</sup> all of the community property passing from the wife to the husband is excluded from the tax, whether the transfer is by will, the laws of succession or inter vivos. It is usually when the husband survives that the "pick-up" tax is levied.

## II. Joint Tenancy Property

### A. When the whole taxable estate is in joint tenancy

#### 1. Death of husband

Joint tenancy property is taxed on the contribution theory.<sup>25</sup> Thus, upon the death of the husband, the inheritance tax determination is made as follows:

(a) If the joint tenancy property was purchased with separate funds of the deceased husband, the wife can take joint tenancy property of a net value of \$48,000 without tax, as follows:

Net joint tenancy . . . . .	\$48,000
Less marital exemption <sup>26</sup> . . . . .	24,000
Less personal exemption <sup>27</sup> . . . . .	24,000
Net taxable . . . . .	0

If the total net value of the separate joint tenancy is in excess of \$48,000, the wife will pay a tax. Example:

Net joint tenancy . . . . .	\$100,000
Marital exemption <sup>28</sup> . . . . .	\$50,000
Personal exemption <sup>29</sup> . . . . .	24,000
Net taxable . . . . .	\$26,000
\$26,000 @ 4% <sup>30</sup> = \$1,040.00 tax.	

<sup>23</sup> Estate of Cushing, *supra* note 22.

<sup>24</sup> CAL. REV. & TAX. CODE §§ 13553, 13554(b).

<sup>25</sup> *Id.* § 13671.

<sup>26</sup> *Id.* § 13805.

<sup>27</sup> *Id.* § 13801.

<sup>28</sup> *Id.* § 13805.

<sup>29</sup> *Id.* § 13801.

<sup>30</sup> The exemption allowed by CAL. REV. & TAX. CODE § 13805 is an "exemption," not an "exclusion" from tax and, accordingly, the exempted property is taken out of the lower tax brackets. Estate of Harrison, 110 Cal.App.2d 717, 243 P.2d 528 (1952). Thus, the tax to the

(b) If the joint tenancy property is created out of "old community property"<sup>31</sup> or out of Section "201.5 property,"<sup>32</sup> the inheritance tax treatment is the same as that of joint tenancy purchased with separate property of the deceased husband.

(c) If the joint tenancy property is created out of "new community property,"<sup>33</sup> the wife can take up to \$96,000 of this joint tenancy property tax free as follows:

Net joint tenancy . . . . .	\$96,000	
Less wife's contribution as original owner <sup>34</sup> . . . . .	\$48,000	
Less marital exemption <sup>35</sup> . . . . .	24,000	
Less personal exemption <sup>36</sup> . . . . .	24,000	96,000
Net taxable joint tenancy . . . . .		0

If the joint tenancy property is valued at more than \$96,000 in the case of new community funds used in the purchase, there will be a tax. Example:

Net joint tenancy . . . . .	\$200,000	
Less surviving wife's contribution as original owner <sup>37</sup> . . . . .	\$100,000	
Amount of property subject to tax . . . . .		100,000
Marital exemption <sup>38</sup> . . . . .	50,000	
Personal exemption <sup>39</sup> . . . . .	24,000	74,000
		\$26,000

\$26,000 @ 4%<sup>40</sup> = \$1,040.00 tax.

## 2. Death of wife

(a) If the property was purchased from "old community funds,"<sup>41</sup> the husband can claim a 100% contribution under Revenue and Taxation Code, Section 13671.

(b) If the joint tenancy was purchased with the separate funds of the

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wife begins at 4% as the taxable portion of the joint tenancy falls entirely within the \$50,000-\$100,000 tax bracket.

<sup>31</sup> Acquired before July 29, 1927 (CAL. CIV. CODE § 161a).

<sup>32</sup> CAL. PROB. CODE § 201.5; *In re Miller*, 31 Cal.2d 191, 187 P.2d 722 (1947).

<sup>33</sup> Acquired after July 29, 1927 (CAL. CIV. CODE § 161a).

<sup>34</sup> CAL. REV. & TAX. CODE § 13671.

<sup>35</sup> *Id.* § 13805.

<sup>36</sup> *Id.* § 13801.

<sup>37</sup> *Id.* § 13671.

<sup>38</sup> *Id.* § 13805.

<sup>39</sup> *Id.* § 13801.

<sup>40</sup> Estate of Harrison, 110 Cal.App.2d 717, 243 P.2d 528 (1952); see note 30 *supra*.

<sup>41</sup> See note 31 *supra*.

deceased wife, the surviving husband can receive joint tenancy property of a net value of \$10,000 without tax, as follows:

Net joint tenancy . . . . .	\$10,000
Less marital exemption <sup>42</sup> . . . . .	5,000
Less personal exemption <sup>43</sup> . . . . .	5,000
Taxable . . . . .	0

If the total net value of the separate joint tenancy property is in excess of \$10,000, the husband will pay a tax. Example:

Net joint tenancy . . . . .	\$100,000
Marital exemption <sup>44</sup> . . . . .	\$50,000
Personal exemption <sup>45</sup> . . . . .	5,000
	<u>55,000</u>
	\$ 45,000

\$45,000 @ 4%<sup>46</sup> = \$1,800.00 tax.<sup>47</sup>

(c) If the joint tenancy was purchased with "new community funds,"<sup>48</sup> the surviving husband can take up to \$20,000 of such joint tenancy tax free as follows:

Net joint tenancy . . . . .	\$20,000
Less husband's contribution as original owner <sup>49</sup> . . . . .	\$10,000
Less marital exemption <sup>50</sup> . . . . .	5,000
Less personal exemption <sup>51</sup> . . . . .	5,000
	<u>20,000</u>
Net taxable joint tenancy . . . . .	0

If the total net value of the so-called "new community" joint tenancy property is in excess of \$20,000, the husband will pay a tax. Example:

Net joint tenancy . . . . .	\$200,000
Less surviving husband's contribution as original owner <sup>52</sup> . . . . .	100,000

<sup>42</sup> CAL. REV. & TAX. CODE §13805.

<sup>43</sup> *Id.* § 13801.

<sup>44</sup> *Id.* § 13805.

<sup>45</sup> *Id.* § 13801.

<sup>46</sup> See note 30 *supra*.

<sup>47</sup> Compare this tax with that paid by the wife in an identical situation. (Paragraph A.1(a) *supra*).

<sup>48</sup> See note 33 *supra*.

<sup>49</sup> CAL. REV. & TAX. CODE § 13671.

<sup>50</sup> *Id.* § 13805.

<sup>51</sup> *Id.* § 13801.

<sup>52</sup> *Id.* § 13671.

Amount of property subject to tax . . . . .	100,000
Marital exemption <sup>53</sup> . . . . .	\$50,000
Personal exemption <sup>54</sup> . . . . .	5,000
	<u>55,000</u>
	\$45,000

\$45,000 @ 4%<sup>55</sup> = \$1,800.00 tax.<sup>56</sup>

#### B. When the whole taxable estate is not in joint tenancy

If the deceased spouse owned other separate property in addition to the property held by the spouses in joint tenancy, the amount of the marital exemption may be changed, as the other property will be taken into consideration.

### III. Powers of Appointment

The 1905 Inheritance Tax Law first subjected powers of appointment to the tax. This taxed the exercise or non-exercise of the power. In 1913, this was changed to impose the tax on the giving of the power. In 1917, the tax was shifted back to the exercise or non-exercise of the power. The Act of 1929 eliminated the taxation of the failure or omission to exercise the power. In 1935, the legislature adopted the present rule, that is, the tax is imposed on the gift or creation of the power. The present law is contained in Sections 13691-13698 of the Revenue and Taxation Code. There is a saving clause as to the exercise of a power of appointment created prior to June 25, 1935.<sup>57</sup>

If the gift of the power of appointment is subject to tax, there is no further tax when the donee of the power dies, whether or not the donee exercises the power.

If the donee of the power also receives a legacy from the donor of the power, the value of the property subject to the power is not added to the value of the legacy but is taxed as a separate transfer.<sup>58</sup>

California may tax the exercise, after 1935, of a power of appointment by a California resident over intangible personal property located in another state (even though the donor of the power died a resident of the other state) where the power was created prior to 1935. This is true, even though the donee of the power was also a resident of the other state, made his will exercising the power while a resident of that state and only subsequently moved to California.<sup>59</sup>

<sup>53</sup> *Id.* § 13805.

<sup>54</sup> *Id.* § 13801.

<sup>55</sup> See note 40 *supra*.

<sup>56</sup> Compare this tax with that paid by the wife in an identical situation. (Paragraph A.1(c) *supra*).

<sup>57</sup> CAL. REV. & TAX. CODE § 13693.

<sup>58</sup> Estate of Elston, 32 Cal.App.2d 652, 90 P.2d 608 (1939).

<sup>59</sup> Estate of Newton, 35 Cal.2d 830, 221 P.2d 952 (1950).

There is a provision for a change in the tax determination should the donee exercise in favor of a charity.<sup>60</sup>

#### IV. *Inter Vivos Transfers*

A transfer without consideration<sup>61</sup> made in contemplation of death,<sup>62</sup> or with the intention that it take effect at or after death,<sup>63</sup> or in which the decedent has retained an interest for life,<sup>64</sup> or under which the transferee promises to make payments to or care for the decedent<sup>65</sup> is subject to the inheritance tax. A revocable trust,<sup>66</sup> an advancement<sup>67</sup> or any transfer made in lieu of or to avoid the passing of property by will or the laws of succession<sup>68</sup> is also subject to the inheritance tax.

The reason for subjecting an inter vivos transfer to an inheritance tax is to prevent the evasion of the tax.<sup>69</sup>

In 1951,<sup>70</sup> the legislature amended Section 13642 to provide that no transfer shall be deemed or held to have been made in contemplation of death if made more than three years prior to death. However, this statute does not apply to other inter vivos transfers wherein the decedent retained any interest or which were made with the intention that they take effect in possession or enjoyment at or after decedent's death. Likewise, it would not apply to revocable trusts, advancements or transfers under which the transferee promises to make payments to or care for the transferor.

In 1953,<sup>71</sup> Section 13644 was amended to provide that a reservation of income or interest by the decedent is conclusively presumed where the transferor retains the possession or enjoyment of the income or interest transferred until death. Section 7 of Chapter 1313 of the Statutes of 1953 provides that the amendment is effective as to all transfers made before or after the effective date thereof.

#### V. *Insurance*

##### A. Ordinary life and Annuities

Ordinary life insurance payable to a named beneficiary has a \$50,000 exclusion.<sup>72</sup> This exclusion does not apply to annuity policies, which are

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<sup>60</sup> CAL. REV. & TAX. CODE §§ 13694-13697.

<sup>61</sup> *Id.* § 13641.

<sup>62</sup> *Id.* § 13642.

<sup>63</sup> *Id.* § 13643.

<sup>64</sup> *Id.* § 13644, as amended in 1953.

<sup>65</sup> *Id.* § 13645.

<sup>66</sup> *Id.* § 13646.

<sup>67</sup> *Id.* § 13647.

<sup>68</sup> *Id.* § 13648.

<sup>69</sup> *Ibid.*

<sup>70</sup> Cal. Stats. 1951, p.3410.

<sup>71</sup> Cal. Stats. 1953, p. 2871.

<sup>72</sup> CAL. REV. & TAX. CODE §§ 13723, 13724.

fully taxable.<sup>73</sup> The difficulties of determining whether a policy issued on a plan other than ordinary life, for example, a combination ordinary life-annuity plan, or "family income plan," etc., is an annuity are at once apparent. Generally there must be an "insurance risk" as distinguished from an "investment risk" to qualify for the \$50,000 exclusion.

If insurance premiums are paid from community funds and a portion of the insurance is payable to a third person, a question arises as to the pro-ration of the \$50,000 insurance exclusion under Section 13724(b). For example, assume \$100,000 of insurance on the husband's life, purchased with community funds, payable \$50,000 to the wife and \$25,000 to each of two children. Following the pro-ration used by the court in *Estate of Maxon*,<sup>74</sup> the \$50,000 insurance exclusion would be divided among the beneficiaries as follows:

$$\begin{array}{rcl} \text{Widow—\$ 50,000 insurance payable to her} & & \\ \hline \$100,000 \text{ total insurance} & & = \frac{1}{2} \end{array}$$

$$\frac{1}{2} \text{ of } \$50,000 = \$25,000 \text{ wife's pro-rata of } \$50,000 \text{ exclusion}$$

The wife would also have a community exclusion of one-half of the amount of the insurance payable to her, thus her share of the insurance would bear no tax.

$$\begin{array}{rcl} \text{Each child—\$ 25,000 insurance payable} & & \\ \hline \$100,000 \text{ total insurance} & & = \frac{1}{4} \end{array}$$

$$\$50,000 \times \frac{1}{4} = \$12,500 \text{ each child's pro-rata of the } \$50,000 \text{ exclusion.}$$

## B. Retirement Plans

Retirement plans issued to employees are causing a good deal of difficulty in the administration of inheritance tax laws. The chief questions raised are whether payments under such plans constitute "proceeds of insurance" or are merely deferred compensation and whether the decedent has made any "transfer" within the meaning of the inheritance tax law.<sup>75</sup> There are no California appellate court decisions to date on private pension plans although a county plan was considered by the supreme court and found subject to tax.<sup>76</sup>

C. Insurance payable to or used for the benefit of the decedent's estate is taxable,<sup>77</sup> unless it is the so-called "GI" insurance.<sup>78</sup>

<sup>73</sup> *Estate of Barr*, 104 Cal.App.2d 506, 231 P.2d 876 (1951).

<sup>74</sup> 30 Cal.App.2d 566, 86 P.2d 922 (1939); see note 20 *supra*.

<sup>75</sup> CAL. REV. & TAX. CODE § 13304.

<sup>76</sup> *Estate of Simpson*, 43 A.C. 605, 267 P.2d 834 (1954), considering CAL. GOVT. CODE § 31452.

<sup>77</sup> CAL. REV. & TAX. CODE § 13722.

<sup>78</sup> *Id.* § 13861.

## VI. Exemptions

### A. Personal exemptions

Exemptions range from \$24,000 for a wife to \$50 for a stranger.<sup>79</sup> All of these exemptions are deducted from the first tax bracket.<sup>80</sup>

### B. Marital exemption

In 1950,<sup>81</sup> California added a "marital exemption," applicable only between spouses.<sup>82</sup> The exemption is not beset by the limitations which surround the marital deduction under the federal estate tax law. For example, there is no "terminable interest" restriction, the gift to the spouse may be of any type of transfer and still qualify for the marital exemption.

The amount of the marital exemption is measured by the total amount of separate property owned by the deceased spouse. The surviving spouse may take, without tax, property equal in amount to one-half of the clear market value of the decedent's separate property.

It should be noted that the California marital exemption is an "exemption," not an "exclusion" nor "deduction," and hence comes out of the bottom tax brackets.<sup>83</sup> In this respect, it is not equal to the community exclusion which, in effect, comes off the top tax brackets. The following example may help to point up this difference:

Assume the husband dies leaving his entire net estate (\$100,000), all community property, to his wife. The tax would be computed as follows:

Wife — \$50,000 community exclusion
24,000 personal exemption
1,000 @ 2% = \$ 20.00
25,000 @ 3% = 750.00
Tax . . . <u>\$770.00</u>

Assume, on the other hand, the husband dies, leaving his entire net estate, all separate property, to his wife. In that case, the tax would be computed as follows:

Wife — \$50,000 marital exemption
24,000 personal exemption
26,000 @ 4% = \$1,040.00 tax

### C. Previously taxed property exemption

This is applicable only between "Class A"<sup>84</sup> transferees and the trans-

<sup>79</sup> CAL. REV. & TAX. CODE §§ 13801-13804.

<sup>80</sup> Estate of Harrison, 110 Cal.App.2d 717, 243 P.2d 528 (1952).

<sup>81</sup> Cal. Stats. 1950, p.361, in effect April 26, 1950.

<sup>82</sup> CAL. REV. & TAX. CODE § 13805.

<sup>83</sup> Estate of Harrison, 110 Cal.App.2d 717, 243 P.2d 528 (1952).

<sup>84</sup> CAL. REV. & TAX. CODE § 13307.

fer must occur within five years to qualify.<sup>85</sup> The computation is made according to a rather complicated formula.<sup>86</sup>

#### D. Charitable exemption

Generally, California follows other states in this exemption, as to qualification<sup>87</sup> and reciprocity.<sup>88</sup> If the transferee qualifies as a California charity, it is immaterial that the funds are to be used outside of California.<sup>89</sup> If the charity is in a reciprocal state, it again is immaterial where the funds are to be used.<sup>90</sup> However, if the California trustee is not itself charitable, the funds must be limited for use in California.<sup>91</sup> Where the trustee is in a "reciprocal" state, it is immaterial where the funds are used, so long as the purposes are charitable.<sup>92</sup>

#### E. Intangibles exemption

California does not tax the intangible personal property of a deceased non-resident of California who is a resident of the United States.<sup>93</sup> The intangibles exemption, for all practical purposes, therefore, is applicable only to deceased non-residents of the United States.<sup>94</sup>

As a practical matter, reciprocal exemption is extended to resident decedents of the United States by few foreign countries. One example is Belgium which taxes only real property in Belgium in the estate of a non-resident of Belgium.<sup>95</sup> This would seem to preclude the taxation of intangibles owned by a non-resident of Belgium and, accordingly, California would not tax the transfer of intangibles in California owned by a decedent who was a Belgium resident at death. Reciprocity or non-taxability of intangibles owned by California resident decedents by countries in which the intangibles are situated must be established as a practical matter before exemption will be accorded to intangibles located in California and owned by decedents who were residents of such other countries at the date of death.

#### F. Veterans' exemptions

Government insurance payable to the estate of a veteran is exempt.<sup>96</sup>

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<sup>85</sup> *Id.* § 13821.

<sup>86</sup> *Id.* §§ 13822, 13823.

<sup>87</sup> *Id.* §§ 13841, 13842.

<sup>88</sup> *Id.* § 13842(c)(1)(2).

<sup>89</sup> *Estate of Barter*, 30 Cal.2d 549, 134 P.2d 305 (1947).

<sup>90</sup> *Estate of Baxter*, 100 Cal.App.2d 397, 223 P.2d 877 (1950).

<sup>91</sup> *Estate of Fleming*, 31 Cal.2d 514, 190 P.2d 611 (1948).

<sup>92</sup> *Estate of Cutler*, 122 Cal.App.2d 147, 264 P.2d 186 (1953).

<sup>93</sup> Note that such intangibles are not included within the definition of "estate" or "property." See INHERITANCE TAX REG. # 754, 18 CAL. ADMIN. CODE 116.

<sup>94</sup> CAL. REV. & TAX. CODE § 13851.

<sup>95</sup> Section I of the Succession Duties Code of Belgium of March 31, 1936, now in force.

<sup>96</sup> CAL. REV. & TAX. CODE § 13861.

Dependents of veterans dying as a result of military service are exempt.<sup>97</sup> The constitutionality of the attempt to make this exemption retroactive<sup>98</sup> is open to debate.

### VII. *Valuations*

The market value of the property on the date of the decedent's death is the basis for the computation of the tax.<sup>99</sup> There is no optional valuation date, as there is in the federal estate tax law. However, in the case of a complete inter vivos transfer made prior to June 25, 1935, the value at the date of the transfer will be used if the transfer was made without the intention that it take effect in possession or enjoyment at or after the death of the transferor.<sup>100</sup> Actuarial tables are used in the case of life estates.<sup>101</sup> Contingencies are disregarded in fixing values.<sup>102</sup>

### VIII. *Deductions*

Deductions are limited to those ordinarily incurred in the administration of estates, debts of the decedent,<sup>103</sup> expenses of the funeral and last illness,<sup>104</sup> certain taxes,<sup>105</sup> ordinary expenses of administration and fees<sup>106</sup> and the federal estate tax.<sup>107</sup> The federal estate tax deduction is limited to the amount computed by the appraiser or the amount actually paid, whichever is lower.<sup>108</sup>

A recent court decision<sup>109</sup> has affirmed the practice of the Inheritance Tax Department in limiting the amount of the deduction for federal estate tax to the federal estate tax as applied to the California assets standing alone. For example, if the decedent's California estate was \$55,000 and real property located outside of California was valued at \$200,000, there would be no federal estate tax deduction allowed against the California assets, as the \$55,000 value of such assets would be covered by the \$60,000 federal exemption.

The amount of gift tax paid on a gift now subject to inheritance tax is not strictly a deduction but rather a credit against the tax.<sup>110</sup>

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<sup>97</sup> CAL. REV. & TAX. CODE § 13871.

<sup>98</sup> *Id.* § 13872.

<sup>99</sup> *Id.* § 13951.

<sup>100</sup> INHERITANCE TAX REG. # 776, 18 CAL. ADMIN. CODE 125.

<sup>101</sup> CAL. REV. & TAX. CODE §§ 13953-13955.

<sup>102</sup> *Id.* § 13956.

<sup>103</sup> *Id.* §§ 13983-13985.

<sup>104</sup> *Id.* § 13986.

<sup>105</sup> *Id.* § 13987.

<sup>106</sup> *Id.* §§ 13988, 13988.1.

<sup>107</sup> *Id.* § 13989.

<sup>108</sup> Estate of Slack, 86 Cal.App.2d 49, 194 P.2d 611 (1948).

<sup>109</sup> Estate of Guthman, 125 Cal.App.2d 408, 270 P.2d 875 (1954).

<sup>110</sup> CAL. REV. & TAX. CODE §§ 14051-14059.

### IX. *Payment of Tax*

The personal representative and the transferee are both liable for the payment of the tax.<sup>111</sup> The tax is due at death,<sup>112</sup> is subject to 5% discount if paid within six months from the date of death<sup>113</sup> and carries a 6% interest penalty<sup>114</sup> if not paid within two years from the date of death.<sup>115</sup> It is payable to the county treasurer of the county of the decedent's residence, not to the Inheritance Tax Department in the State Controller's Office.<sup>116</sup> The duties of the executor, administrator or trustee with reference to the collection of the tax are set forth in detail.<sup>117</sup> Bonds for deferment of payment<sup>118</sup> and to secure the payment of delinquent taxes<sup>119</sup> are also provided for.

The tax may be compromised, either with the estate<sup>120</sup> or with other states.<sup>121</sup>

There is an automatic lien on property transferred within the meaning of the law<sup>122</sup> and provision is made for the release of such liens.<sup>123</sup>

### X. *Refunds*

A. Refunds are granted in the following cases:

1. Overpayment where erroneous order fixing tax is modified.<sup>124</sup>
2. Inadvertent overpayment.<sup>125</sup>
3. Overpayment of "pick up tax."<sup>126</sup>
4. Exercise of power of appointment in favor of a charity.<sup>127</sup>
5. Occurrence of contingency.<sup>128</sup>
6. Debts proved after distribution.<sup>129</sup>
7. Armed service refunds.<sup>130</sup>

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<sup>111</sup> *Id.* § 14101.

<sup>112</sup> *Id.* § 14102.

<sup>113</sup> *Id.* § 14161.

<sup>114</sup> *Id.* § 14211.

<sup>115</sup> *Id.* § 14103.

<sup>116</sup> *Id.* §§ 14104, 14128, 14141, 14142, 14144, 14791-14798.

<sup>117</sup> *Id.* §§ 14121-14128, 14143.

<sup>118</sup> *Id.* §§ 14171-14178.

<sup>119</sup> *Id.* §§ 14201-14203.

<sup>120</sup> *Id.* §§ 14191, 14192.

<sup>121</sup> *Id.* §§ 14195-14195.4, 14197.13.

<sup>122</sup> *Id.* §§ 14301, 14302.

<sup>123</sup> *Id.* §§ 14303-14308.

<sup>124</sup> *Id.* §§ 14361, 14362.

<sup>125</sup> *Id.* §§ 14371-14373.

<sup>126</sup> *Id.* §§ 14381-14383.

<sup>127</sup> *Id.* §§ 14391-14393.

<sup>128</sup> *Id.* §§ 14401-14403, 14411-14414.

<sup>129</sup> *Id.* §§ 14421-14424.

<sup>130</sup> *Id.* §§ 14426-14428.

## XI. Administration

The State Controller and the Inheritance Tax Department are charged with the administration of the Act.<sup>131</sup> The controller appoints a panel of appraisers who then are appointed by the superior court to compute the tax in each particular estate.<sup>132</sup>

A. The appraiser reports to the court in any proceeding in which the tax determination is to be made.

1. Estates in probate.<sup>133</sup>
2. Controller's suits.<sup>134</sup>
3. Taxpayer's suits.<sup>135</sup>

B. Over the years, an informal procedure in small estates without court proceeding has been developed. The tax is assessed simply by a letter from the Inheritance Tax Department to the treasurer of the county of residence. This procedure has not been extended beyond cases in which the tax is relatively nominal and there are no questions of valuation nor matters of disagreement between the taxpayer and the Inheritance Tax Department.

### CALIFORNIA GIFT TAX LAW

#### A. Introduction

Enacted in 1939,<sup>136</sup> this law applies to all completed gifts made with a donative intent.<sup>137</sup> The rates and exemptions are the same as those set forth in the inheritance tax law,<sup>138</sup> except that there is an annual exclusion of \$4,000<sup>139</sup> and no marital exemption. Charitable transfers are exempt,<sup>140</sup> and reciprocity in the matter of intangibles is provided for.<sup>141</sup>

The tax is computed according to the amount of net gifts in prior years.<sup>142</sup>

#### B. Gifts of Community Property

No distinction is made for gift tax purposes between so-called "old"

<sup>131</sup> CAL. REV. & TAX. CODE §§ 14731-14741, 14761-14764, 14811-14814, 14831, 14901, 14341-14347, 14350, 14355.

<sup>132</sup> *Id.* §§ 14771-14774.

<sup>133</sup> *Id.* §§ 14501-14515.

<sup>134</sup> *Id.* §§ 14531-14537.

<sup>135</sup> *Id.* §§ 14551-14555, 14571-14577; see generally, §§ 14591, 14592, 14601, 14651-14654, 14671-14675.

<sup>136</sup> Cal. Stats. 1939, c.652.

<sup>137</sup> CAL. REV. & TAX. CODE §§ 15101-15109, 15201, 15202.

<sup>138</sup> *Id.* §§ 15110-15117, 15205-15208, 15421-15427.

<sup>139</sup> *Id.* §§ 15401, 15402.

<sup>140</sup> *Id.* §§ 15441, 15442.

<sup>141</sup> *Id.* § 15451, *cf.* GIFT TAX REG. # 58, 18 CAL. ADMIN. CODE 13.

<sup>142</sup> *Id.* § 15204.

and "new" community property.<sup>143</sup> If community property is transferred to the other spouse, one-half is exempt.<sup>144</sup> If transferred to a third party, each spouse is a donor of one-half.<sup>145</sup> The transfer of separate property into community property is treated in detail.<sup>146</sup>

### C. Valuation

For gift tax purposes, property is valued as of the date of the transfer<sup>147</sup> except that the valuation for inheritance tax purpose may be used.<sup>148</sup>

### D. Liability for Tax and Payment

Both donor and donee are liable, with primary liability in the donor.<sup>149</sup> The tax is due at the time of the gift, but there are provisions for deferment<sup>150</sup> and compromise.<sup>151</sup>

### E. Returns

Returns are to be filed before April 15th of the year following the year in which the gift was made.<sup>152</sup> There are provisions for penalties for late filing<sup>153</sup> and for failure to pay the tax.<sup>154</sup>

### F. Administration

The gift tax law is administered by the State Controller through the Inheritance Tax Department.<sup>155</sup> There are the usual provisions for collection of the tax such as civil actions,<sup>156</sup> for imposition of liens,<sup>157</sup> execution<sup>158</sup> and withholding by third persons.<sup>159</sup>

Refund procedure is set forth in detail.<sup>160</sup> Interest is allowed on certain refunds.<sup>161</sup>

The very nature of the California inheritance tax, as a tax on the "bene-

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<sup>143</sup> *Id.* §§ 15304, 15306.

<sup>144</sup> *Id.* § 15301.

<sup>145</sup> *Id.* § 15302.

<sup>146</sup> *Id.* § 15303.

<sup>147</sup> *Id.* §§ 15551-15558.

<sup>148</sup> *Id.* §§ 15571-15577.

<sup>149</sup> *Id.* § 15901.

<sup>150</sup> *Id.* §§ 15902-15908, 15931-15937, 15961-15965, 15971.

<sup>151</sup> *Id.* §§ 15951, 15952.

<sup>152</sup> *Id.* §§ 15651-15656, 15671, 15672, 15675.

<sup>153</sup> *Id.* §§ 15681-15685.

<sup>154</sup> *Id.* §§ 15904-15908, 15961-15965, 15971.

<sup>155</sup> *Id.* §§ 16501-16510, 16531-16537, 16561-16564.

<sup>156</sup> *Id.* § 16051.

<sup>157</sup> *Id.* §§ 16061-16068.

<sup>158</sup> *Id.* §§ 16081-16083.

<sup>159</sup> *Id.* §§ 16101-16103.

<sup>160</sup> *Id.* §§ 16221-16224, 16251-16253, 16281.

<sup>161</sup> *Id.* §§ 16271, 16272.

ficial succession" to property, means that, in determining whether a tax is due, one must look to the statutory and case law on such related topics as wills, community property, insurance, joint tenancy and property law, future interests, probate practice and procedure, etc. Thus, the reader must view this summary as a mere introduction to a much larger body of law far beyond the scope of this article but which, nevertheless, must be kept in mind as necessary to an understanding of the inheritance tax law.