



STATE OF CALIFORNIA

CONTROLLER'S OFFICE

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**N—INHERITANCE TAX**

# Inheritance Tax Instructions

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Location of Offices

**STATE CONTROLLER'S OFFICE**

**DIVISION OF TAX ADMINISTRATION—INHERITANCE TAX**

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# INHERITANCE TAX INSTRUCTIONS

These instructions have been prepared for the purpose of assisting in the proper completion of the Inheritance Tax Declaration, Form IT-22, and the Marital Property Declaration, Form IT-3. These forms are designed to provide the basic information from which the inheritance tax can be determined. In order to avoid unnecessary correspondence, delays and the possibility of an unfavorable interpretation, it is important to answer all questions completely and clearly. The declarations and other information submitted therewith are strictly confidential and cannot be divulged except to local, state or federal tax officials or as may be necessary for the enforcement of the Inheritance Tax Law.

All questions must be answered except as indicated. If the space furnished is not sufficient, additional sheets should be attached, making reference to the question being answered.

The forms are designed so that they may be signed under penalty of perjury. However, since the "penalty of perjury" provision is not effective unless executed within the State of California, the forms must be notarized if executed outside California.

## A. Inheritance Tax Declaration, Form IT-22

### 1. General Instructions

The Inheritance Tax Declaration, Form IT-22, may be completed by anyone having knowledge of the decedent and his financial affairs.

The California death tax is an inheritance tax. As such, it is levied on the right of each beneficiary to take (see rate chart at end of instructions). It applies equally to inheritances and transfers made in lieu of inheritances such as joint tenancies, life estates, gifts in contemplation of death, certain trusts, etc.

The following documents are generally required to be submitted with the Inheritance Tax Declaration, form IT-22.

- (a) *Will and Codicils.* Legible copies of decedent's last will and codicils thereto whether or not there is to be a probate proceeding.
- (b) *Trust documents, etc.* See questions 6b, 6c, 6d.
- (c) *Blood tracing, etc.* See question 7a.
- (d) *Deeds or deed data.* See Instruction 7a.
- (e) *Property tax bills.* See Instruction 8c.

### 2. When Inheritance Tax Declaration, Form IT-22, Required

(a) *Resident Decedents.* When a person who was residing in California at the date of death had interest in any type of property or who, during lifetime transferred by gift any property.

(b) *Nonresident Decedents.* When a person who was not residing in California at the date of death had an interest in any tangible personal or real property located in California or who, during lifetime, transferred by gift any such property.

(c) *Estate Administered in California.* In all cases where there is a court proceeding in California to probate an estate, terminate a joint tenancy or life estate, or to determine inheritance tax.

### 3. Time and Place for Filing

The process of determining the amount of tax due cannot begin until the required forms have been filed. The forms must be filed with the Inheritance Tax Referee, if one has been appointed, otherwise with the nearest office of the State Controller, Division of Tax Administration—Inheritance Tax. Interest is charged at the rate of 12% per year on any delinquent unpaid tax. The tax is delinquent nine months from the date of death.

### 4. Marital Status (Question 3)

Where the date of death is on or after January 1, 1981, transfers to a surviving spouse are not subject to inheritance tax except that when the surviving spouse is given a limited power of appointment over a portion of the estate, the property subject to that power is taxable. However, the character of the property in the estate (as either community, quasi-community or separate property) may affect distribution of the estate. Therefore, the Marital Property Declaration, form IT-3 (see Section B of Instructions, at page 5), is required in all cases where the decedent and surviving spouse entered into an agreement concerning the status of their property, and in all cases where the will of the decedent puts the surviving spouse to an election to either take under the provisions of the will or take his/her one-half of the community property. In any other case, the Controller's Office may require a form IT-3 to be completed if a review of the information submitted indicates the character of the property may affect the tax determination.

### 5. Proof of Relationship to Decedent (Questions 4a, 7a, 8, 9c, 10b)

The amount of exemption and the rate of tax de-

pend upon relationship to the decedent (see rate chart at end of instructions). Beneficiaries not related to the decedent by blood other than spouse, son-in-law, daughter-in-law, adopted or mutually acknowledged child or issue of same, or a brother's or sister's descendants by adoption, should be designated as "stranger," even though they may be related by marriage or may have been close friends of the decedent.

## 6. Previously Taxed Property (Question 7e)

Where the decedent acquired, within five years of his death, assets taxed to him as a transfer from a spouse, lineal issue, lineal ancestors, adopted child or adopted child of lineal issue, a previously taxed property credit may be allowable against the inheritance tax, if assets pass to a person whose exemption is \$20,000 or more (Revenue and Taxation Code, Section 14051).

## 7. Description of Assets (Questions 4a, 10b, 13)

A complete description of each asset should be provided.

(a) *Real Estate.* Describe and identify so that it may be readily located for inspection and valuation. If a Certificate of Release of Inheritance Tax Lien is desired, it is necessary to submit the date of the deed, date of recordation and book and page number of record. This may be done by a separate attachment or by submitting a copy of the deed which includes the recording information stamped on the deed by the County Recorder.

(b) *Promissory Notes.* State (1) name of maker, (2) date of note, (3) face value, (4) rate of interest, (5) unpaid balance at date of death (principal and interest), and (6) names of payees (beneficiaries) and manner in which title to note held. If note was secured by a trust deed or mortgage, give brief description of the property securing same.

(c) *Bank, Checking, Savings and Certificate Accounts.* State name and branch of bank or savings institution, account number and nature of account (checking, savings, time deposit, etc.).

(d) *Stocks.* State exact name of corporation, number of shares and class or series.

(e) *Bonds.* State quantity and denomination, name of obligor, kind of bond, date of maturity, interest rate and interest due dates. For U.S. Savings Bonds also state year and month of purchase.

(f) *Miscellaneous Assets.* Jewelry, furs, automobiles, art objects, livestock, leaseholds, judgments, growing crops, etc. should be described with sufficient precision to readily permit identification. General descriptions are not sufficient.

(g) *Fractional Interests.* If decedent was the owner of an undivided (fractional) interest in any asset as a co-tenant with any other person(s) state (1) name of co-tenant(s), (2) relationship of co-tenant(s), if any, to decedent, (3) the percentage or fraction of each interest, and (4) source from which the co-tenant(s) acquired his interest.

## 8. Value of Assets (Questions 4a, 10b, 13)

The value to be reported is the fair market value as of the date of death, except for the third column of Question 10b which asks for the date of transfer value.

(a) *Bank, Checking, Savings, Certificate Accounts.* The balance including any unposted interest. This amount can be verified with the bank or savings institution.

(b) *Promissory Notes.* The outstanding balance, including any accrued interest, should be shown. This amount is normally available from the payment schedule or book or from the collection agent if one has been used.

(c) *Real Property.* The fair market value of the property, not just the equity should be shown. Any encumbrance should be listed as a deduction in Question 15. Unless recently purchased or sold, the value shown should be the declarant's own opinion of value. *In all cases where no Inheritance Tax Referee has been appointed, a copy of the county property tax bill for the year of death or as close thereto as possible should be attached for each parcel of property.*

(d) *Stocks, Bonds, Other Securities.* The value of securities traded on the open market can be ascertained from any reputable stock broker, if not readily available in the newspapers. For closely held securities (family corporations, etc.), copies of the income statements and balance sheets for the three years immediately preceding death should be furnished.

(e) *Miscellaneous Assets.* The declarant's opinion (and in appropriate cases an expert's opinion) of value of jewelry, furs, furniture, automobiles, mobile homes, tools and equipment, etc., should be furnished. For insurance on the life of another person (Question 13), IRS Form 938 should be obtained from the insurance carrier. For partnership interests and sole proprietorships, the income statements and balance sheets for the three years immediately preceding death should be furnished.

## 9. Contribution (Questions 4b, 6a)

Proof of contribution, as explained in the note to Question 4b, is vital to the determination of whether any joint or "trustee" asset is wholly or partially exempt from inheritance tax. In certain cases, the proof of contribution to a joint tenancy will result in the

requirement that the survivor file a gift tax return for the creation of the joint tenancy asset. For proof of contribution by the survivor to real property or bank accounts, forms IT-16 (real property) and IT-15 (accounts) may be used.

### **10. Value of Percentage of Interest in Estate (Question 7a)**

The inheritance tax is based upon the amount which passes to each individual. Therefore, the answer to this question should indicate the approximate amount or percentage of the estate going to each heir, beneficiary or transferee. Statements such as "see will" or "see trust" are not helpful since they do not indicate the declarant's opinion of the proper distribution to be made under the will or trust.

### **11. Trusts, Life Estates, Powers of Appointment (Question 6)**

(a) Question 6a refers to bank and/or savings and loan accounts that are titled, for example, "X in trust for Y." These accounts will pass to the beneficiary by the contractual provisions designated. Where spouses are joint trustees for the benefit of another, on the death of one spouse the account is treated as a joint account between the spouses and should be reported under question 4a.

(b) Question 6b refers to trusts, other than trustee accounts, established by the decedent.

(c) Question 6c refers to interests of decedent in trusts established by other persons for his benefit.

(d) Question 6d refers to a power or authority given to the decedent to distribute property or income therefrom or to control assets.

### **12. Gifts and Transfers (Question 10)**

This question requires a scheduling of *all* gifts by

decedent, not just gifts made within three years of death. Only minimal gifts should be excluded from the schedule. The value of each transferred asset both at the date of gift and at the date of death is required. If the asset was sold by the transferee prior to death, the date of sale, amount and subsequent disposition of the proceeds of sale should be shown. (See also Instruction 8)

### **13. Deductions (Question 15)**

Itemization must be made for deductions in excess of \$1,000, except as noted on the declaration. This does not mean deductions of less than \$1,000 should be omitted. Where there is a probate proceeding, use all subdivisions; and in all other cases use only subdivisions (a) and (c).

Real property taxes become a lien as of the first day in March. Therefore, if the decedent died after the first day in March and before any installments have been paid, the entire amount of the tax is deductible. If the decedent died after the first installment was paid, but before the second, the amount of the second installment only is deductible. If the decedent died after the first day in March, but before the second installment of the prior year's tax has been paid, the full year's tax for the year of death plus the unpaid second installment from the prior year are deductible.

Only the ordinary expenses of administration are deductible for inheritance tax purposes. These include filing fees, publication of notice to creditors, cost of executor's or administrator's bond and the Inheritance Tax Referee's fee. Extraordinary expenses and costs of property upkeep during administration are not deductible even though they are valid administration expenses.

Under subdivision (c), fees claimed must be only for those services which are specified in Revenue and Taxation Code, Section 13988.1, and the character of each such service should be set forth with the amount of fee allotted to it.

## **B. Marital Property Declaration, Form IT-3**

This form is designed to provide information in order that the character of assets held by the spouses or either of them may be determined.

In California, assets may be separate property, community property or quasi-community property in nature. Separate property generally is property owned before marriage and property acquired during marriage by gift or inheritance. Community property generally is property acquired during marriage through personal effort of the spouses while residing in California. Quasi-community property generally is property which was acquired by the spouses while residing outside California which would have been community property had the spouses been residing in California at the time of acquisition.

The amount of tax may vary considerably depending upon the character of the assets and manner in which the estate is to be distributed. Therefore, it is important that care be taken in completing this declaration.

#### **14. When Marital Property Declaration, Form IT-3, Required**

Where the date of death is prior to January 1, 1976, form IT-3 is required when the decedent is survived by a spouse and all properties included in the Inheritance Tax Declaration, form IT-22, are of a value of \$10,000 or more. Where the date of death is on or after January 1, 1976, and before January 1, 1981, and the decedent is survived by a spouse, form IT-3 is required when the decedent made any lifetime transfers to the surviving spouse, or if any of the decedent's estate passes to persons other than the surviving spouse.

Where the date of death is on or after January 1, 1981, form IT-3 is required where the decedent and surviving spouse entered into an agreement concerning the status of their property as either community or separate, and in cases where the will of the decedent puts the surviving spouse to an election to either take under the provisions of the will or to take his/her one-half community property. Form IT-3 may also be required in specific instances upon request of the Controller's Office.

The original and one copy of form IT-3 must be filed along with the Inheritance Tax Declaration, form IT-22, and any other supplementary documents which may be necessary, with the inheritance tax referee, if one has been appointed, otherwise with the Inheritance Tax district office in charge of the administrative area in which the decedent resided at the time of his death. There is no late filing penalty or particular filing date for form IT-3. However, the tax becomes delinquent nine months after the date of death and the amount of inheritance tax due cannot be determined until this declaration, when required, has been submitted.

#### **15. Description of Assets (Questions 2, 5b)**

See also Instruction 7. A conscientious effort should be made to adequately describe and value all of the real and personal property owned by the decedent at the time of marriage. A legal description must be given for each parcel of real property situated in California, and if located in a city, the name of the street and number, in order that it may readily be ascertained whether such property was still in the decedent's possession at the time of death. In listing any other property, the description thereof should be such that it may be readily identified with or traced to property in possession of the decedent at the date of death. If the marriage took place before the decedent was established financially, and his belongings at that time consisted of clothing, personal effects and perhaps an automobile, a description such as "personal effects of nominal value" will be acceptable.

Question 5b must be similarly completed with reference to property acquired by decedent by way of gift, devise, descent, joint tenancy survivorship or insurance benefits unrelated to personal services rendered during marriage.

The answer to Question 2 with reference to property owned at marriage must be considered in connection with Question 3. An explanation will be required if the decedent's occupation or net worth appears to be inconsistent with the answers regarding properties owned at date of marriage. See also Instruction 16.1.

#### **16. Valuation of Assets (Questions 2, 5b)**

See also Instruction 8. The values given should be as of the date of marriage or date of receipt as indicated. For real property owned by decedent at date of marriage, in addition to the market value, indicate the original purchase price and any balance owing at date of marriage.

##### **16.1 Decedent's Occupation at Marriage (Question 3)**

The decedent's occupation at the date of marriage must be stated as it may be indicative of the decedent's probable income at that time and thereafter. If the decedent was unemployed at the time of marriage or was attending college, that fact should be disclosed. If the decedent's occupation appears to be inconsistent with the answers to Question 2 regarding property owned at marriage, a further explanation will be required.

##### **16.2 Decedent's Net Worth at Marriage (Question 4)**

The decedent's net worth at the date of marriage must be given as it may provide a basis for tracing property then owned. The net worth is simply the difference between the decedent's property reported under Question 2 and any liabilities or obligations owed at the time of marriage. If the decedent's net worth appears to be inconsistent with the answers to Question 2 regarding property owned at marriage, an explanation will be required.

##### **17. Accounting for Separate Property (Question 6, 7)**

Both Questions 6 and 7 require either specific designation of the assets previously reported in Questions 2 and 5b (Question 6) or a tracing of their disposition up to the date of death (Question 7). The burden of tracing is, by law, placed upon the declarant and general claims of "commingling," "disposed of before death," etc., will not relieve this burden. In

absence of such a presentation, the continued existence of the proceeds of such separate property and any increase in the value thereof as part of the decedent's assets will be presumed.

If the answer to Question 6 is "yes," it is necessary to specify where each of the assets reported in Questions 2 and 5b is listed on the inventory of decedent's estate or included in the Inheritance Tax Declaration, form IT-22. As a general rule these assets which are specifically traced to properties in the inventory of Inheritance Tax Declaration, are separate property of the decedent along with the rents, issues and profits therefrom.

If the answer to Questions 7a, 7b or 7c is "yes," indicating a disposal during lifetime of property listed under Questions 2 or 5b a tracing of their disposition to the date of death is required. In absence of such a tracing the continued existence of the proceeds of such separate property will be presumed.

### **18. Accounting for Quasi-Community Property (Question 8)**

(a) The answers to this question are important in determining what portion of the estate is community property and what portion is quasi-community property. Quasi-community property is property acquired during marriage while the spouses were residing outside California which would have been community property had the spouses been residing in California at the time of acquisition. The answers must be consistent with those given to Questions 9 and 10, regarding the spouses' business careers or occupations. Where these answers are contradictory, an explanation will be required.

The burden of tracing the subsequent disposition of quasi-community property is, by law, placed upon the declarant and general claims of "commingling," "disposed of before death," etc., will not relieve this burden. In absence of such a presentation, the continued existence of the proceeds of such quasi-community property and any increase in the value thereof as part of the decedent's assets will be presumed.

(b) The answer to Question 8b is of significance to determine to what extent quasi-community property is present in the decedent's estate at the date of death. The answers should be set forth as completely as possible, in chronological order, showing the dates of residence in each state and the combined net worth of both spouses upon taking up residence in each state.

(c) Question 8c is designed to determine what portion of the combined net worth indicated under Question 8b was separate property of either the decedent or the surviving spouse and which assets were quasi-community. Separate property of the surviving spouse which exists at the date of death is not taxable.

(d) The answer to Question 8d is to provide information for determining which items of the decedent's assets at the date of death are quasi-community, which items are separate property of the decedent and which are community property. In the event that the quasi-community cannot be traced to the date of death, it may be necessary to extend the figures reported under Question 8b or 8c at a fair capitalization rate from the date the spouses became domiciled in California to the date of death, the totals being treated as quasi-community or separate property respectively.

### **19. Business Careers and Occupations of Spouses (Questions 9, 10)**

The answers to these questions should be set forth as completely as possible, in chronological order, starting with the date of marriage. The employer, position, approximate annual income and dates should be specified. Relatively inconsequential jobs held early in the marriage may be lumped together. The answers to these questions are helpful in establishing the net worth of the spouses when they became California residents.

### **20. Damages for Personal Injury (Question 11)**

The answer to Question 11 will assist in determining the separate or community nature of such damages and the tracing thereof into assets owned at the date of death of decedent. Generally damages received for personal injuries after September 11, 1957 are the separate property of the spouse suffering the injury. Legislation effective November 13, 1968 provides that except when received from the other spouse or in certain cases of spouses living separate and apart, such damages become community property.

### **21. Property Settlement Agreements (Questions 12, 13)**

It is of particular importance that these questions be carefully answered inasmuch as the nature of property (separate, community or quasi-community) may have been changed by agreement of the spouses. If such an agreement was entered into, the property owned at the death of a decedent may be shown to be of a completely different nature than would be indicated by other data presented in the form IT-3. Likewise a divorce or decree of separation may have resulted in a change in the nature of such property.

**CALIFORNIA INHERITANCE TAX RATES AND EXEMPTIONS**  
Effective as to decedents dying on or after January 1, 1981

CLASSIFICATION	EXEMPTION	Up to \$25,000.00	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$200,000	\$200,000 to \$300,000	\$300,000 to \$400,000	Over \$400,000
<b>Husband Wife</b>	<b>ALL EXEMPT *</b>	<b>3%</b>	<b>4%</b>	<b>6%</b>	<b>8%</b>	<b>10%</b>	<b>12%</b>	<b>14%</b>
<b>Minor Child<sup>1</sup></b> (Includes adopted)	<b>40,000</b>	-----	Rate of tax on amount left after deducting exemption from \$50,000.00 <b>4%</b>	<b>6%</b>	<b>8%</b>	<b>10%</b>	<b>12%</b>	<b>14%</b>
<b>Adult Child, Grandchild, Parent, Grandparent</b> (Relationship may be by Blood or Adoption) <b>Mutually Acknowledged Child</b> <b>Descendant of Mutually Acknowledged Child</b>	<b>20,000</b>	Rate of tax on amount left after deducting exemption from \$25,000.00 <b>3%</b>	<b>4%</b>	<b>6%</b>	<b>8%</b>	<b>10%</b>	<b>12%</b>	<b>14%</b>
<b>Brother, Sister</b> (Excludes Brothers- and Sisters-in-law) <b>Descendant of Brother or Sister</b> (Includes Descendant by Adoption) <b>Wife or Widow of Son, Husband or Widower of Daughter</b>	<b>10,000</b>	Rate of tax on amount left after deducting exemption from \$25,000.00 <b>6%</b>	<b>10%</b>	<b>12%</b>	<b>14%</b>	<b>16%</b>	<b>18%</b>	<b>20%</b>
<b>Strangers in Blood and Relationships not Specified Above</b>	<b>3,000</b>	Rate of tax on amount left after deducting exemption from \$25,000.00 <b>10%</b>	<b>14%</b>	<b>16%</b>	<b>18%</b>	<b>20%</b>	<b>22%</b>	<b>24%</b>

<sup>1</sup> Effective as to decedents with a date of death on or after January 1, 1981, minor orphans of a decedent are entitled to an exemption in an amount equal to \$10,000 multiplied by the excess of 21 over the age of the orphan (in years) at decedent's date of death.

\* If a surviving spouse receives a limited power of appointment in property, the property subject to the power is taxed at the rates indicated.

## PRIVACY NOTIFICATION

The Information Practices Act of 1977 (effective July 1, 1978), the Governor's Executive Order B-22-76 and the Federal Privacy Act, require the department to provide the following information to individuals who are asked to supply information:

The principal purpose for requesting inheritance tax declaration information is to administer the Inheritance Tax Law of the State of California. This includes the determination and collection of the correct amount of tax.

The California Revenue and Taxation Code requires every individual liable for any tax imposed by the Code to file a declaration or statement according to the forms and regulations prescribed by the State Controller (Section 14735 and regulation, Section 14501). Individuals filing inheritance tax declarations, statements or other documents are required to include their Social Security numbers to provide proper identification and to permit processing of the declarations.

Furnishing all the appropriate information requested by return forms and related data is mandatory. Failure to provide all or part of the requested information may result in the disallowance of claimed exemptions, exclusions, credits, deductions or adjustments resulting in increased tax liability, loss or delay in issuance of a refund for overpayment, interest charges on unpaid taxes and other disadvantages to the taxpayer.

Information furnished on the declaration form may be transferred to other governmental agencies as authorized by law (U.S. Internal Revenue Service and Franchise Tax Board), and may be examined by other local, state and federal officials charged with the administration of any tax law.

For those individuals with outstanding tax liabilities, the total amount due may be disclosed to: employers, financial institutions and county records for the purpose of collecting the amount owed.

This will be the principal notification under the Information Practices Act and the Executive Order concerning the solicitation of information in connection with any tax return or tax liability of an individual.

Individuals have the right to review their own records maintained by the State Controller's Office. The Division of Tax Administration of the Controller's Office is the agency requesting the information. The official responsible for maintaining the information is:

**Assistant Chief Inheritance Tax Attorney**  
**Division of Tax Administration**

Sacramento, CA 95814  
Telephone No. (916) 445-6321

Los Angeles, CA 90012  
Telephone No. (213) 620-4710

San Francisco, CA 94103  
Telephone No. (415) 557-0497

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