*220.0280*

(916) 445-4588

April 13, 1981

Mr. Ernest L. Comalli
Sonoma County Assessor
585 Piscal Drive, Room 104F
Santa Rosa, California 95401

Dear Mr. Comalli:

This letter is in response to your inquiry concerning the estate of Carlos A The facts as summarized in a letter from Mr. Mark Freed to your office are as follows:

Carlos died in 1972, leaving a will. The will was challenged by William who claimed to be an illegimate son of Carlos entitled to share in his estate. McKean filed an action in the Probate Court to have his rights judicially declared. William and the Carlos estate settled the action in 1978; William receiving a parcel of real property. You request a Board opinion as to the date of transfer of the property for purposes of reappraisal.

Mr. Freed's letter indicated his opinion that Rule 462(m)(3) determines change of ownership through will or intestate succession to be date of death. He reasoned a settlement should have the same effect in this situation as a fully litigated decision resulting in the same award. I agree with Mr. Freed's conclusion and provide the following discussion to clarify the decision.

In California an illegitimate child is entitled to all benefits of the parent and child relationship (including inheritance rights) if he establishes himself under Civil Code Section 7004. If established as a member of the parent and child relationship William would have the status of a pretermitted heir, entitled to contest the disposition of the will. If William succeeded in the contest, Smith v. Olmstead, 88 C. 582, 585 (1891), provides any property passing from the decedent is to be regarded as passing through intestate succession.

In Estate of Murphy, 92 Cal. App. 3d 413 (1979), the court stated an intent to compromise with respect to undetermined interests and rights as opposed to engaging in litigation is strongly encouraged by law, particularly in a probate situation.

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While not bound by the compromise, the taxing agency should consider the policy favoring settlements when deciding whether to involve itself in the transaction.

In the case at hand, property was fully disposed of by will. Without the will contest, there is no doubt the date of transfer of the property involved would be date of death. Also, if William was to have fully litigated the issue and gained the property, the effective date of transfer would be date of death. It would seem the property should fairly be taxed at the date of death.

The best argument against this proposition is that if William is not actually entitled to share in the estate of Carlos ~~Lam~~, he has been given a windfall if the property has increased in value from 1972-1978. However, I believe the policy of encouraging settlements in probate situations where the taxing agency would not be effected by a judicial decision outweighs the interest of the agency of disregarding the settlement; i.e., promoting litigation.

If you have any further questions, let me know.

Very truly yours,

Glenn L. Rigby
Assistant Chief Counsel

GLR:jlh

(AT)

bc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Legal Section