

REVENUE AND TAXATION CODE  
Division 2. Other Taxes  
Part 8. Prohibition of Gift and Death Taxes  
Chapter 1. Imposition of Tax

*Cal Rev & Tax Code § 13302 (2014)*

**§ 13302. Imposition of estate tax equal to federal tax credit; Limitation**

Notwithstanding the provisions of Section 13301, whenever a federal estate tax is payable to the United States, there is hereby imposed a California estate tax equal to the portion, if any, of the maximum allowable amount of the credit for state death taxes, allowable under the applicable federal estate tax law, which is attributable to property located in the State of California. However, in no event shall the estate tax hereby imposed result in a total death tax liability to the State of California and the United States in excess of the death tax liability to the United States which would result if this section were not in effect.

**HISTORY:**

Adopted by voters, Props. 5, 6 (Prop. 6 prevails), operative June 8, 1982. Added Stats 1982 ch 1535 § 15.

**NOTES:**

**Former Sections:**

Former § 13302, relating to definitions, was added Stats 1943 ch 658 § 1, effective July 1, 1945, and repealed by voters, Props. 5, 6 (Prop. 6 prevails), operative June 8, 1982, Stats 1982 ch 1535 § 14.

**Note**

Stats 2000 ch 363 provides:

**SECTION 1.** The Legislature finds and declares all of the following:

(a) It is and always has been the intent of the Legislature in enacting the California Estate Tax Law (Chapters 327 and 1535 of the Statutes of 1982), to implement the intent of *Section 13302 of the Revenue and Taxation Code* (adopted by Proposition 6, Initiative Statute, June 8, 1982) that California be entitled to collect the maximum allowable amount of the credit for state death taxes, allowable under the federal estate tax law, that is attributable to property located in California.

(b) Despite this requirement, an appellate court decision has held that, under California property law, certain transfers included in a decedent's gross estate under the federal estate tax law are not subject to tax under the California Estate Tax Law because the decedent under California law was not the owner.

(c) The Legislature expressly declares that this appellate court decision is contrary to the Legislature's intent, and the amendments made by this act are intended to clarify what the Legislature declares was and continues to be the law.

BILL ANALYSIS

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SENATE RULES COMMITTEE	AB 2818
Office of Senate Floor Analyses	
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327-4478	
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THIRD READING

Bill No: AB 2818  
Author: Corbett (D)  
Amended: 8/7/00 in Senate  
Vote: 27 - Urgency

SENATE REVENUE & TAXATION COMMITTEE : 5-0, 6/7/00  
AYES: Chesbro, Poochigian, Alpert, Bowen, McPherson

SENATE APPROPRIATIONS COMMITTEE : 12-0, 6/26/00  
AYES: Johnston, Bowen, Burton, Escutia, Johnson, Karnette,  
Kelley, Leslie, McPherson, Mountjoy, Perata, Vasconcellos

ASSEMBLY FLOOR : 74-0, 5/11/00 (Passed on Consent) - See  
last page for vote

SUBJECT : Estate tax

SOURCE : State Controller

DIGEST : This bill clarifies the definition of property  
included in a decedent's gross estate. This bill also  
conforms the interest rate charged for overpayments on  
estate taxes to federal law, effective January 1, 2001.

Senate Floor Amendments of 8/7/00 correct an erroneous  
section reference.

ANALYSIS : Existing law imposes an estate tax on the  
gross estates of California decedents. The California  
estate tax, frequently referred to as a "pick-up" or  
"sponge" tax, is equal to the maximum state tax credit

permitted under the federal estate tax. Thus, the California estate tax does not result in an increase in the taxpayer's overall death tax burden - the state is effectively allowed to claim a portion of the federal estate tax that would otherwise be paid to the IRS.

Federal law allows a person to create a "qualified terminable interest property" trust (QTIP) for estate planning purposes. Under this law, property that qualifies as QTIP trust is excluded from a decedent's gross estate for purposes of federal estate tax. The property passes from the decedent, in which the surviving spouse has a qualifying income for life. The QTIP trust must then be included in the surviving spouse's estate for federal tax purposes when he or she dies.

Since enactment of our estate tax in 1982, and until the recent decision in Hoffman v. Connell, the state has treated QTIP property as passing to the surviving spouse for California estate tax purposes as well. This interpretation is consistent with clear legislative intent that the state collect a tax equal to "the maximum allowable amount of the credit for state death taxes ?." (RTC 13302)

However, the Hoffman court looked at whether the decedent's spouse owned the QTIP property using general law concepts, and did not analyze how QTIP property is treated as part of the decedent's spouse's gross estate for purposes of California vs. federal estate law. As a result of this decision, estate tax that would have gone to California is being paid to the federal government instead.

This bill would modify the California estate tax law by specifically referring to "gross estate" as defined in federal law. Under this change, the treatment of QTIP trusts would be the same for California as for federal tax.

The bill would also conform with federal provisions relating to interest on underpayments and overpayments of tax.

In addition, it provides that if an estate owes tax to the federal government prior to the enactment of this bill, the

interest refunded to the estate will be sufficient to pay any late interest penalties to the federal government. This part of the bill is operative until January 1, 2002.

Purpose of the bill . The bill would remove an unintended difference between federal and state estate tax laws, by effectively providing that QTIP trusts are treated the same under both laws. The net effect will be that a portion of the estate tax currently flowing to the federal government will come to the state instead, without any change in the overall estate tax liability.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes  
Local: No

The Controller indicates that California has lost some \$1.7 million due to the Hoffman v. Connell decision. This revenue is being paid to the federal government instead of to California. This bill would stop that flow of revenue, but it would not affect taxpayers' liabilities since the total amount of estate tax, federal and state combined, would not be affected.

SUPPORT : (Verified 8/8/00)

State Controller (source)  
Tasha Levinson for Freeman, Freeman and Smiley, LLP  
Estate Planning, Trust and Probate Law Section of the State  
Bar of California

ASSEMBLY FLOOR :  
AYES: Aanestad, Ackerman, Alquist, Aroner, Ashburn,  
Baldwin, Bates, Bock, Brewer, Briggs, Calderon, Campbell,  
Cardenas, Cardoza, Cedillo, Corbett, Correa, Cox,  
Cunneen, Davis, Dickerson, Ducheny, Dutra, Firebaugh,  
Floyd, Gallegos, Granlund, Havice, Honda, House, Jackson,  
Kaloogian, Keeley, Knox, Kuehl, Leach, Lempert, Leonard,  
Longville, Lowenthal, Machado, Maddox, Maldonado,  
Margett, Mazzoni, McClintock, Migden, Nakano, Olberg,  
Oller, Robert Pacheco, Rod Pacheco, Papan, Pescetti,  
Reyes, Romero, Runner, Scott, Shelley, Steinberg,  
Strickland, Strom-Martin, Thompson, Thomson, Torlakson,  
Villaraigosa, Vincent, Washington, Wayne, Wesson,  
Wiggins, Wildman, Zettel, Hertzberg

DLW:sl 8/8/00 Senate Floor Analyses