



(916) 324-6594

March 29, 1985

Mr. Dick Frank
San Luis Obispo County Assessor
Room 100, County Government Center
San Luis Obispo, CA 93408

Attention: Ms. Marion I. West
Deputy County Assessor

Dear Ms. West:

This is in reply to your letter of January 29, 1985 to Mr. James Delaney in which you request our opinion as to the date of reappraisal with respect to the following facts.

Mr. Fred L. Gist was last seen on August 19, 1975 having disappeared while on a hunting trip in the mountains. On December 20, 1982, Mr. Gist's wife, Lolita C. Gist, was appointed Executor of his Will. On April 6, 1984, the Judgment of Final Distribution in the Estate of Mr. Gist was filed, however, pursuant to the Judgment, the property distributed remains subject to a claim by Fred Gist which must be filed with the court prior to December 20, 1985. If no claim is filed by Fred Gist by December 20, 1985, the Judgment provides that the property shall be deemed distributed free and clear of all claims by Fred L. Gist. Based on the foregoing facts, you ask if the reappraisal date would be:

1. August 19, 1975, the date of disappearance,
2. December 20, 1982, the date of appointment of the Executor of his Will, or
3. December 20, 1985, the date when all claim of Fred L. Gist has terminated?

Property Tax Rule 462(a)(2) (18 Cal. Admin. Code § 462(a)(2)) provides in relevant part:

"A 'change in ownership' in real property occurs when there is a transfer of a present interest in the property, and a transfer of the right to beneficial use thereof, the value of which is substantially equal to the value of the fee interest. Every transfer of property qualified as a 'change in ownership' shall be so regarded whether the transfer is voluntary, involuntary, by operation of law, by grant, gift, devise, inheritance,...."

Under the foregoing provision, the only transfer qualifying as a change in ownership in this matter is a devise (transfer of real property by will). The date of the change in ownership resulting from a devise is the date of death of the decedent. (Property Tax Rule 462(n)(3).)

The problem here is that the fact of Fred L. Gist's death has not been established. When a person has been missing for over seven years, however, his estate may be administered as that of a decedent by invoking the presumption of death from seven years' absence created by Evidence Code Section 667. 7 Witkin, Summary of California Law, page 5768. Probate Code Sections 280-294, inclusive, provide a procedure for the final distribution of the property of a living person without recourse by him if he has been missing for the requisite period. Although the foregoing provisions have been repealed and revised procedures enacted, Sections 280-294 are applicable here because this case was pending under those provisions on December 31, 1983. (See Probate Code Section 1359(b).) Probate Code Section 280 provides:

"Whenever any person owning property in the State of California has been absent from his last known place of residence for the continuous period of seven years, with his whereabouts for such period unknown to the persons most likely to know thereof, he shall be deemed to be a missing person, and all property of such person in the State of California may be administered, as though such person were dead, in the same manner as provided for the administration of deceased persons by this code, subject to the conditions, restrictions and limitations hereinafter prescribed."

The date of reappraisal here cannot be December 20, 1985, even though that is the date when all claim of Fred L. Gist has terminated, because Probate Code Section 291 provides that if no claim is made within three years after appointment of the executor (by December 20, 1985), a conclusive presumption arises that the missing person died prior to the filing of the petition. Similarly, the date of reappraisal cannot be December 20, 1982, the date of the appointment of the Executor of the Will of Fred Gist because that date does not correspond with an established or presumed date of death. Moreover, the appointment of an executor does not constitute a change in ownership as defined by the applicable statutory provisions or Property Tax Rule 462.

As indicated above, Evidence Code Section 667, in effect at the time the petition was filed in this matter, provided that "a person not heard from in seven years is presumed to be dead." As a general rule, it is presumed that life continues throughout the entire period of seven years. (People v. Niccoli (1951 102 Cal.App.2d 814, 819.)) Such presumption of life may be overcome, however, by evidence that the missing person was subjected to some specific peril, illness or other circumstances sufficient to justify the inference of death prior to seven years following the person's disappearance. Such evidence need be only of such character as to make it more probable than not that the person died at a particular time. (Estate of Christin (1933) 128 Cal.App. 625, 631.)

The date of reappraisal in this case, therefore, is either August 19, 1975, August 19, 1982, or some date in between depending upon whether there is evidence to rebut the presumption that Fred Gist lived for seven years after his disappearance. Each case of disappearance has its own individual facts and thus affords no precedent for a case of disappearance under different facts, however, the type of facts the courts consider may be illustrated by the following cases.

In Lesser v. New York L. Ins. Co. (1921) 53 Cal.App. 236, the insured disappeared and no trace of him or his body was ever found. The following evidence tending to show the improbability of absence due to any cause other than death was properly admitted to prove the fact of death on the date the insured was last seen: That insured was last seen on a certain date near where he was accustomed to going bathing in the ocean; that his clothes and jewelry

were later found in one of the bath-houses; that he was affectionate and attentive towards his wife during their married life; that he had been possessed of some wealth and a substantial income; that he had certain lodge affiliations such as Masons, Elks, Odd Fellows, etc.

In Estate of Christin, supra, a man escaped from an insane asylum and was not heard from for over seven years. His wife died five years after his escape. The court held that evidence that he was seriously ill at the time of his escape justified the conclusion that he predeceased her.

However, in People v. Niccoli, supra, where there was evidence that the defendant disappeared, leaving his car near the airport, and that an intensive search failed to locate him, the court held that evidence of disappearance without motive is admissible to "quicken time" but that where there is a notice or doubt as to the reason for disappearance, the presumption of continued life remains. In Niccoli, defendant had a motive for disappearing as shown by evidence that defendant was penniless; had been indicted; had removed labels from his clothing and license plates from his car; and was a member of a group upon whom a murderous assault had been made.

In this case, the only evidence of the circumstances concerning the disappearance of Fred Gist is that he disappeared on August 19, 1975 while on a hunting trip in the mountains and that he left behind a wife, two daughters and a probate estate in excess of \$350,000, about one-third of which is cash. In our opinion, this evidence alone is not sufficient to rebut the presumption that Fred Gist lived for seven years after his disappearance. There may be additional evidence of which we are unaware, however, which would justify a finding that Fred died on or near the date of his disappearance, August 19, 1975.

The foregoing cases suggest that it would be helpful to know Fred Gist's age and health when he disappeared, the remoteness of the hunting locale, the ruggedness of the terrain in the vicinity of where he was last seen, the weather conditions in that vicinity at and after the time of his disappearance, his relationship with his wife and family, his financial condition, his lodge and other affiliations if any, and any other facts tending to indicate whether he had a reason to disappear.

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If, after considering all available evidence, it appears more probable than not that Fred Gist died in the mountains shortly after he was last seen, the date of reappraisal should be August 19, 1975. If not, the date of reappraisal should be August 19, 1982.

Very truly yours,

Eric F. Eisenlauer
Tax Counsel

EFE:fr

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