

M e m o r a n d u m

535.0087

To :**Date :** July 8, 1980**From :** Legal – MHH**Subject :** Does Purchase from a Probate Estate Result in Successor's Liability?

Your memo of May 13, 1980 asks whether successor's liability can be asserted against a person who bought a business from a probate estate. You surmise that the property purchased was inventory, and note that the estate did not operate the business.

As you know, Probate Code Section 707.5 sets forth procedures for filing tax claims against the estates of decedents. Subsection (b) of Section 707.5 covers excise taxes administered by the Board. It is our opinion that the Legislature intended this section to be the sole and exclusive method for settling debts of decedents, and that attempting to inject successor's liability would interfere with the orderly administration of probate estates.

It is further our opinion that the language of Revenue and Taxation Code Section 6811 prohibits the imposition of successor's liability in probate estates. The section requires that the delinquent taxpayer must either sell or quit the business before successor's liability arises. Since death prevented a sale or quitting of the business, no seller/purchaser relationship existed prior to death and probate administration.

It is therefore concluded that purchase from a probate estate does not result in successor's liability.

Note that tax may apply to the sale of tangible personal property by an executor or administrator under court order, however, if the person making the sale is a retailer (see Regulation 1573). By the same token, if only inventory was sold, it could be a sale for resale.