

ESTATE PLANNING NEWS



Inheritance Tax Masquerade: Graduated Filing Fee Ruled Unconstitutional

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This past March, the court of appeal issued an opinion in the Estate of Pierre P. Claeysens, *Burkey v. State of California*, which challenged the graduated filing fee as an estate or inheritance tax masquerading as a court user fee.

What is the Graduated Filing Fee?

The graduated filing fee is a fee that California courts charged in probate cases commenced between August 18, 2003 and December 2007. Rather than charging a flat filing fee when a probate was initiated, the court instructed the estate's personal representative (sometimes called an executor, executrix, administrator, or administratrix) to estimate the size of the estate. If the estate's size exceeded \$250,000, then before the probate could be closed and the estate distributed to the beneficiaries, the personal representative was required to pay a "corrected filing fee."

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Announcements

On November 21, Nicole will join Contra Costa County Superior Court Judge Joyce Cram and fellow Solo and Small Firm board members, David Pearson and Dorianne Romero-Plihon, in presenting *Running a Law Firm: Tips and Tricks For Solos and Small Firms* at the 14th annual MCLE Spectacular. This event helps attorneys earn their continuing legal education credits.

Nicole has been a presenter at the MCLE Spectacular since 2005.



Tip of the Month



Passing on Passwords

As more people conduct their financial affairs online, there is an increased need to leave behind a written list of passwords and security codes. Without this information, and in the absence of paper statements, surviving family members are unable to identify, access, or close accounts. Under these circumstances, probate proceedings must be initiated. The process is very slow and quite cumbersome for those living in the Internet age.

Entertainment

The Secret (2007)

In the wake of a tragic accident, the body of 16-year-old Samantha Marris serves as a resting place for her dead mother's lingering spirit, drastically shifting the dynamic between the teen girl and her still-grieving father. A thought-provoking supernatural drama.



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Obstacles are things a person sees
when he takes his eyes off his goal.

-- E. JOSEPH COSSMAN
Entrepreneur

Inheritance Tax Masquerade

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The corrected filing fee was based on the actual size of the estate. For estates probated between 2005 and 2007, the initial filing fee was \$320. Additional fees were applied so that estates valued:

- 1) Between \$250,000 and \$500,000 paid \$385;
- 2) Between \$500,000 and \$750,000 paid \$485;
- 3) Between \$750,000 and \$1 million paid \$635;
- 4) Between \$1 million and \$1.5 million paid \$1,135;
- 5) Between \$1.5 million and \$2 million paid \$2,135;
- 6) Between \$2 million and \$2.5 million paid \$2,635;
- 7) Between \$2.5 million and \$3.5 million paid \$3,635; and
- 8) In excess of \$3.5 million paid another 0.2% on top of the amount over \$3.5 million.

Filing Fees Add Up Fast

Noelle Claeysens Burkey, executrix of the Estate of Pierre P. Claeysens, paid \$74,642.52 in probate filing fees for an estate valued at \$35.7 million. She then petitioned the court for a refund in the amount of \$74,411.52 (*i.e.*, the amount by which the graduated filing fee exceeded the initial filing fee of \$231 when the probate began in 2003). The court denied the petition, and Ms. Burkey appealed.

California Has No State Estate Tax

As a general rule, there is no estate tax in California. California Revenue and Taxation Code section 13301 (enacted by Proposition 6) provides:

“Neither the state nor any political subdivision of the state, shall impose any gift, inheritance, succession, legacy, income, or estate tax ... on the estate or inheritance of any person ... by reason of any transfer occurring by reason of a death.”

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Although Section 13302 makes an exception for the state “pickup” tax, the pickup tax is not considered an estate tax because it does not place a tax burden on the estate over and above that imposed by the federal estate tax.

Our State Constitution Forbids the Legislature from Imposing an Estate or Inheritance Tax

Article II, Section 10(c) of the California Constitution prohibits the State Legislature from imposing an estate or inheritance tax.

State’s Revenue Argument

The Attorney General, who represents the State of California, argued that the fee was enacted for revenue purposes. In 2003, the Legislature was faced with a budgetary crisis and anticipated that the trial courts would not receive adequate funding to meet expenditures. To meet the shortfall, the Legislature enacted a variety of new fees and court user fees, including the graduated filing fee. The Legislative Analyst estimated that the graduated filing fee alone would generate \$7.3 million for the 2003-2004 fiscal year.

Comparison to Ad Valorem Tax

The court found that the graduated probate filing fee operated like an ad valorem tax (*i.e.*, a tax based on the value of property).

The California Supreme Court previously struck down a graduated fee based on the inventory value of a probate estate as an invalid ad valorem tax in *Fatjo v. Pfister* (1987).

The Appellate Court’s Ruling

The appellate court held that, while fixed filing fees are appropriate, the graduated filing fee structure based upon the appraised value of an estate is “unprecedented” and violates state law.

The court reversed the earlier decision. As a result, the beneficiaries of the *Clayseens* estate will receive an additional \$74,411.52.

Probate Courts No Longer Collect the Graduated Filing Fee

As a result of the *Burkey* case, probate courts will collect only a \$320 filing fee.

The recent decision has already saved one of my probate clients \$815 in court fees.

Conclusion

While this case makes a needed improvement to the probate process, most people will still prefer to avoid probate proceedings altogether. The burdensome requirements, lengthy delays, hefty attorney and personal representative fees, and publicity aspects remain distinct disadvantages.

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