

M e m o r a n d u m**395.0070**

To: Oakland – Auditing (ODM)

Date: March 13, 1978

From: Tax Counsel (HLC) – Headquarters

Subject: ---

This is in response to your noted dated March 8, 1978, concerning sale by subject taxpayer of her “entire beneficial right, title and interest” in her husband’s estate. The estate included personal property. Taxpayer’s attorney contends that the sale of the interest in the estate is a sale of an intangible, and is thus not subject to sales tax.

Probate Code Section 300 provides that when a person dies, the title to his property, real and personal, passes to the person to whom it is devised or bequeathed subject to the possession of the executor. The executor may, with approval from the probate court, sell property to satisfy claims on the estate, but title does not pass to or from the executor, rather it passes from the decedent. Thus taxpayer here was vested with title to the property on the death of her husband. Subsequent transfer of her interest in the estate is the same as sale by her of the individual inherited items of property. The sale of that portion of the estate which is personal property is subject to all of the provisions of the Sales and Use Tax Law.

HL Cohen

HLC/vs
Enclosure