

Memorandum 87-13

Subject: Study L-1025 - Amendments to AB 708 (Creditor Claims Against Decedent)

Attached to this memorandum are amendments that would add the Commission's creditor claims and payment of debts recommendations to the probate bill. The amendments include technical revisions made by the staff for consistency in usage with the other parts of the bill and to cure minor defects discovered in the draft. We have also received two letters addressed to substantive aspects of creditor claims and payment of debts. See Exhibits 1 and 2.

The San Diego County Bar Association, Probate, Trust, and Estate Planning Subcommittee for Legislation (Exhibit 1) notes that the Commission's recommendation provides for an award of reasonable litigation expenses (including attorney's fees) against a creditor who sues on a rejected claim and loses. See Section 9257(d) (page 18 of the draft). The subcommittee approves this provision, but also believes that reasonable litigation expenses should be awarded to a creditor who sues on a rejected claim and wins, especially if the court concludes that the rejection of the claim was unreasonable or unwarranted. "It is our position that in recent years more and more unreasonable litigation has been spawned because of untenable positions taken by various parties to litigation and, therefore, we believe the movement should be to allow judges to award reasonable attorneys' fees in all types of litigation rather than just reimbursing parties for their costs."

Rawlins Coffman of Red Bluff (Exhibit 2) writes to complain of the procedure for obtaining Medi-Cal reimbursement claims from the state Department of Health Services. Under existing law, notice of death must be given to the Director of Health Services within 90 days after death, and the director has four months after notice is given in which to make a claim. See Section 9202 (pages 14-15 of the draft). Mr. Coffman's concern is that this procedure can delay closing the estate, which otherwise can be accomplished within four months, because the

director waits until the last minute to make a claim. He suggests that the statutory time limits be cut in half (i.e., the director would have two months after receipt of notice in which to make a claim).

The staff has two observations about this problem. (1) We have in fact made inquiry of the Department of Health Services whether their response time might not be cut down to 30 days, the same as for other creditors. They responded to us in September 1986 stating their belief that a shortened time period would not be appropriate, and they have outlined for us the procedure they follow:

The decedent's Medi-Cal number and usage is established by cross-checking of name, address, social security number and date of birth. Then an inquiry letter is sent to establish the existence of claimable property and the responsible person handling the probate proceedings. When a positive response is received, an itemization of Medi-Cal benefits utilized is distilled from raw data processing figures usually comprising 25 to 30 pages per decedent. This detailed preparation must be processed for approximately 1,000 accounts per month. Thus, the current four month claim filing period is generally necessary to perfect the claims.

(2) The existing statute seems to accept the fact that some estates may be distributed before the Director of Health Services makes a claim. Section 9203(b) (page 15 of the draft) provides that, "If property in the estate is distributed before expiration of the time allowed a public entity to file a claim, the public entity has a claim against the distributees to the full extent of the public entity's claim, or each distributee's share of the distributed property, whichever is less."

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

CRABTREE & GOODWIN

ATTORNEYS AT LAW

SUITE 402, CRABTREE BUILDING

303 'A' STREET

SAN DIEGO, CALIFORNIA 92101

BROOKS CRABTREE
JAMES GOODWIN
DANIEL B. CRABTREEAREA CODE 619
TELEPHONE 239-6161

CA LAW REV. COMM'N

FEB 10 1987

RECEIVED

February 4, 1987

Mr. John DeMouilly
California Law Revision Commission
4000 Middlefield Road, Ste. D-2
Palo Alto, CA 94303

Re: Memorandum 87-2--Creditor's Claims

Dear Mr. DeMouilly:

On behalf of the San Diego County Bar Association, Probate, Trust, and Estate Planning Subcommittee for Legislation, I wish to call attention to the proposed Section 9307 (d), regarding Action on Rejected Claims and state that our Subcommittee agrees that a creditor who fails to recover should have to pay reasonable litigation expenses, including attorneys' fees in the Court discretion. However, the Subcommittee also believes that reasonable attorneys' fees in the Court's discretion should be paid to a successful creditor, especially if the Court concludes that the rejection on the claim was unreasonable or unwarranted.

It is our position that in recent years more and more unreasonable litigation has been spawned because of untenable positions taken by various parties to litigation and, therefore, we believe the movement should be to allow judges to award reasonable attorneys' fees in all types of litigation rather than just reimbursing parties for their costs.

Very truly yours,

Daniel B. Crabtree
Daniel B. Crabtree

DBC/mam

POST OFFICE BOX 158

RAWLINS COFFMAN
ATTORNEY AT LAW
RED BLUFF, CALIFORNIA 96080

TELEPHONE 527-2021
AREA CODE 916

February 11, 1987

CA LAW REV. COMMITTEE

FEB 17 1987

RECEIVED

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Estate of Mildred Disher, Dec'd.
Tehama County Probate No. 10404
Date of Death: September 9, 1986

Gentlemen:

In redoing the probate code you might take a look at one of the "Great Bureaucracies" of the State of California.

My client, Maurine L. Samples, is named as executrix of the will of Mildred Disher, who died September 9, 1986, a resident of Tehama County. My file indicates that we notified the Tehama County Welfare Department of the death and the pending probate on or about October 7, 1986, in an attempt to determine whether the State of California was claiming any form of lien.

Somehow or other I was furnished with Form No. CM-ERS005-R006. On November 3, 1986, I forwarded it to the Department of Health Services, P. O. Box 2946, Sacramento, California 95812.

Since the letters testamentary issued to Maurine L. Samples, my client, on October 6, 1986, and since I normally schedule distribution for four months thereafter, or February 6, 1987, I was anxious to determine whether or not the State of California does have a lien. On January 22, 1987, I wrote the Department of Health Services asking my question. A copy of my inquiry, dated January 22, 1987, is attached.

Guess what? The Great Bureaucracy finally got off the dime. In my absence from the office on February 10, 1987, a telephone call came in and my secretary made the following note:

"2-10-87 - 4:15 p.m.

"Julia Hanson (916) 324-7797 (Sacramento),
Department of Health Services, re: estate

of Mildred Disher.

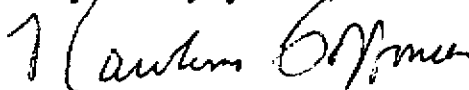
"She just now received at her desk your letter of January 22 indicating Disher estate to close February 6. They have a claim in amount of \$2,687.85 which is valid, according to Mrs. Hanson. She stated she has four months from the time they are officially notified and receive a death certificate (which was Nov. 3, 1986, per your letter.) Law she cited to back her up - Section 700.1 of Probate Code and 14009.5 of Welfare and Institutions Code."

Fortunately, I did not initiate distribution on February 6, 1987.

May I suggest that the ninety-day requirement notice and the four month's time to prove a claim be cut in half. This is typical of the Great Bureaucracy. They wait until the last minute to take action.

It is obvious that no one has imposed upon the Department of Health Services. Enclosed is a copy of my letter of November 3, 1986. Instead of spending the money for a long distance telephone call on February 10, 1987, why didn't the Great Bureaucracy perfect its claim and mail it to this office? It obviously knew the amount was \$2,687.85.

Very truly yours,



RAWLINS COFFMAN

RC:mb

P. S. Do you suppose the Great Bureaucracy will wait until the last minute, namely March 3, 1987, to perfect its claim?

R. C.

cc: Department of Health Services
Maurine L. Samples
Governor George Deukmejian
Del R. Skillman, Tehama County Director of Social Welfare

RAWLINS COFFMAN
ATTORNEY AT LAW
RED BLUFF, CALIFORNIA 96080

January 22, 1987

Department of Health Services
General Collection Section
P. O. Box 2946
Sacramento, CA 95812

Re: Estate of Mildred Disher, Dec'd.
Tehama County Probate No. 10404
Date of Death: September 9, 1986

Gentlemen:

Enclosed is a self explanatory copy of my letter to
you dated November 3, 1986.

The letters testamentary were issued October 6, 1986,
to my client. Immediately following February 6, we plan to
distribute the estate. If you have a lien of any kind, please
let me have that information forthwith.

Sincerely,

RAWLINS COFFMAN

RC:tm

enclosure

cc: Maurine L. Samples

RAWLINS COFFMAN
ATTORNEY AT LAW
RED BLUFF, CALIFORNIA 96080

November 3, 1986

Department of Health Services
General Collection Section
P. O. Box 2946
Sacramento, CA 95812

Re: Estate of Mildred Disher, Dec'd.
Tehama County Probate No. 10404
Date of Death: September 9, 1986

Your Ref: Form CM-ERS005-R006

Gentlemen:

I hand you herewith on behalf of the above-named estate your form number CM-ERS005-R006.

The probate estate consists solely of the home of the decedent. The modest savings and the modest checking bank accounts were in joint tenancy with the decedent's sister, Maurine L. Samples.

If you need further information please feel free to contact my office.

Very truly yours,

/s/

RAWLINS COFFMAN

RC:tm
enc.

cc: Maurine L. Samples

STATE OF CALIFORNIA-HEALTH AND WELFARE AGENCY
DEPARTMENT OF HEALTH SERVICES

GEORGE DEUKMEJIA, Governor

OCTOBER 17, 1986

GENERAL COLLECTION SECTION

P.O. BOX 2946

SACRAMENTO, CA 95812

ATTENTION: Person Responsible for the
Estate of Decedent Named Below

TELEPHONE 916-322-2280

MAURINE L SAMPLES FOR
MILDRED DISHER
BOX 352
DIAMOND SPRINGS CA 95619

DECEASED : MILDRED DISHER
SOCIAL SECURITY NO.: 564344550
MEDI-CAL NO. : 52609564344550

California's Probate Law requires that this Department be notified when settling the estate of a deceased person who has received or may have received health care under the Medi-Cal Program. Section 700.1 of the Probate Code requires the heirs, the executor, the administrator, or the persons in possession of any property of the decedent to provide the Director of Health Services notification no later than 90 days from the date of death. Notification to Social Security or the County Welfare Office does not satisfy this requirement.

State files indicate that the decedent named above was eligible to receive medical services paid for by the Medi-Cal program; notice to this Department is therefore required. Please send your notification to the office shown above with the following information:

1. Estimated value of:
 - A. Real Estate: \$20,000 per appraisal of Probate Referee
 - B. Cash & Bank Accounts (after burial expenses): \$1360.88
 - C. Other (specify): _____
2. Name, address, and telephone number of person or attorney settling the estate: RAWLINS COFFMAN
P. O. Box 158
Red Bluff, CA 96080
3. Probate Number & County of filing: Tehama County Probate No. 10404
4. Copy of Death Certificate (photocopy acceptable).
5. Comments: _____

Your completion and return of this letter and a copy of the death certificate in the enclosed envelope will provide this Department the notice required by law. You will be notified if the Department plans to file a claim against the estate to recover the cost of Medi-Cal benefits paid on behalf of the decedent as provided for in State law (Section 14009.5 of the Welfare and Institutions Code). It is important that you return the letter even if there are no assets in the estate. If the estate will be probated, complete as much information as possible even if you are unable to estimate the value of assets at this time.

If there is an attorney handling probate proceedings, please refer this letter to that attorney as soon as possible. If you have any questions, please call the number above. Your cooperation in meeting this reporting requirement is appreciated.

AMENDMENTS TO ASSEMBLY BILL 708 (CREDITOR CLAIMS AND PAYMENT OF DEBTS)

AMENDMENT 1

On page 7, line 14, after "58.", insert:

(a)

AMENDMENT 2

On page 7, between lines 19 and 20, insert:

(b) "General personal representative" excludes a special administrator, except a special administrator having the powers, duties, and obligations of a general personal representative under Section 465.

AMENDMENT 3

On page 8, between lines 16 and 17, insert:

SEC. . The heading of Part 4 (commencing with Section 200) of Division 2 of the Probate Code is amended to read:

PART 4. ESTABLISHING AND REPORTING FACT OF DEATH

AMENDMENT 4

On page 9, between lines 20 and 21, insert:

SEC. . Chapter 3 (commencing with Section 215) is added to Part 4 of Division 2 of the Probate Code, to read:

CHAPTER 3. REPORTING FACT OF DEATH

215. (a) If the decedent has received or may have received health care under the provisions of Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, a beneficiary or a person in possession of property of the decedent shall give the Director of Health Services notice of the decedent's death not later than 90 days after the date of death. The notice shall include a copy of the decedent's death certificate. The notice shall be given as provided in Section 1215, addressed to the director at the Sacramento office of the director.

AMENDMENT 5

On page 12, between lines 2 and 3, insert:

SEC. . Section 303 of the Probate Code is amended to read:

303. (a) No will shall be admitted to probate or letters of administration granted or other proceeding had (except the ordering of a transfer as hereinafter provided in subdivision (b)), before any judge who is interested as an heir of the decedent, or as a legatee or devisee under a will, or when he the judge is named as executor or trustee in the will, or a creditor or is in any other manner interested or disqualified from acting. A judge who was a witness to a will is disqualified from acting in any proceeding prior to and including the admission of the will to probate or in any proceeding involving its validity or interpretation.

(b) When a petition is filed praying for the admission of a will to probate or for the granting of letters of administration, or when proceedings are pending with respect to an estate, and there is no judge of the superior court in that county qualified to act, the court or judge must make an order transferring the proceedings to the superior court of an adjoining county, and the clerk, on receipt of the clerk's fee, must transmit to the clerk of the court to which the proceedings are transferred a certified copy of the order together with all papers in the proceedings on file in ~~his~~ the clerk's office; and thereafter the court to which the proceedings are transferred shall exercise the same jurisdiction over the estate and all matters relating to the administration thereof as if it had original jurisdiction. But such transfer shall not be ordered when some other judge qualified to act is assigned by the chairman of the judicial council to sit in the county where such proceedings are pending, to hear such proceedings.

AMENDMENT 6

On page 14, lines 27 and 28, strike out "or present it to" and insert:

and

AMENDMENT 7

On page 14, line 30, strike out "700" and insert:

9100

AMENDMENT 8

On page 20, strike out lines 8 to 40, inclusive, strike out all of pages 21, 22, and 23, and on page 24, strike out lines 1 to 14, inclusive, and insert:

SEC. . Chapter 12 (commencing with Section 700) of Division 3 of the Probate Code is repealed.

SEC. . Chapter 12 (commencing with Section 707) is added to Division 3 of the Probate Code, to read:

CHAPTER 12. CLAIMS AGAINST DECEDENT

ARTICLE 1. ACTIONS INVOLVING DECEDENT

707. The filing of a claim is not required as a prerequisite to commencing an action against the decedent for damages for injury to, or for the death of, a person caused by the wrongful act or neglect of the decedent or to recover upon a judgment obtained in the action if (1) the decedent had liability insurance applicable to the cause of action, (2) the amount of damages sought in the action does not exceed the maximum amount of that insurance, or recovery in excess thereof is waived, and (3) the estate of the decedent otherwise qualifies for summary probate proceedings pursuant to Chapter 3 (commencing with Section 13100) of Part 1 of Division 8. If the amount of damages sought in the action exceeds the maximum amount of the insurance, filing and presentation of a claim is required only with respect to the amount sought in excess of the maximum amount of the insurance. The defendant in the action may be designated as "Estate of (name of decedent), Deceased". No action shall be maintained under this section unless the insurer has been served with a copy of the complaint.

709. If an action is pending against the decedent at the time of his or her death, the plaintiff shall in like manner file his or her claim with the clerk as required in other cases. No recovery shall be allowed against decedent's estate in the action unless proof is made of the filing. If, however, the action which is pending is an action for damages, the decedent was insured therefor, the insurer has accepted the defense of the cause, and an appearance has been made in such action on behalf of the decedent, no claim shall be required except for amounts in excess of or not covered by the insurance. Further, if any action is pending against the decedent at the time of his or her death

and a claim based on such action is not filed within the prescribed period, the court may thereafter allow filing of the claim on such terms as may be just and equitable, upon the claimant's petition and notice of hearing given as provided in Section 1220, if it finds that the claim was not filed previously because neither the claimant nor the claimant's attorney had actual knowledge of the decedent's death at least 15 days prior to the expiration of the prescribed period for filing the claim, but any property distributed pursuant to court order or any payment properly made before notice of such petition shall not be subject to the claim.

No relief shall be granted unless the petition is filed within a reasonable time after discovery of decedent's death, and in any event within one year after the expiration of said prescribed period, and before petition for final distribution has been filed.

If, at the time of filing the petition hereunder, assets of the estate have been paid to general creditors or some thereof or have been distributed by decree of preliminary distribution to heirs, devisees, or legatees (in either case after expiration of the prescribed time for claims), and it appears that the filing and later establishment of the claim, in the circumstances, would cause or tend to cause unequal treatment between heirs, devisees, legatees, or creditors, then permission to file the claim shall be denied.

709.1. Notwithstanding any other provision of law, the court in which an action described in Section 709 is pending may permit the action to be continued against the defendant in the name of "Estate of (name of decedent), Deceased," upon petition of the plaintiff, pursuant to the same procedure, and upon the same terms and conditions, as are provided in Section 721 for claims which were not the subject of a pending action at decedent's death. The procedure of this section is cumulative and does not supersede the procedure provided in subdivision (b) of Section 385 of the Code of Civil Procedure.

716. (a) An action may be brought by the holder of a mortgage or lien to enforce the same against the property of the estate subject thereto, where all recourse against any other property of the estate is expressly waived in the complaint. The action may be brought whether

or not the claim was filed as provided in Part 4 (commencing with Section 9000) of Division 7; but no counsel fees shall be recovered in the action unless the claim was so filed.

(b) As used in this section, "lien" includes, but is not limited to, a judgment that is a lien.

719. When a judgment is recovered, with costs, against any executor or administrator, the executor or administrator shall be individually liable for such costs, but they must be allowed the executor or administrator in the administration accounts, unless it appears that the suit or proceeding in which the costs were taxed was prosecuted or defended without just cause.

720. If a claim for damages for injuries to, or death of, a person, for which no action specified in Section 709 was pending at the time of the decedent's death, is not filed within the time otherwise limited by this chapter, the court, upon application of the claimant made not later than one year after accrual of the claimant's cause of action, and upon such notice and hearing, if any, as the court may order, shall permit the filing of the claim and, if required, appoint or reappoint a personal representative. Neither the filing of the claim pursuant to this section nor its later establishment, in whole or in part, shall make payments properly made before notice of such application subject to the claim. The personal representative, distributee, or payee shall not be liable on account of such prior distribution or payment. The court shall impose reasonable conditions upon the filing of the claim to avoid unequal treatment between the heirs, devisees, legatees, or creditors of the estate.

This section shall not be applicable to claims of public entities under Chapter 5 (commencing with Section 9200) of Part 4 of Division 7.

721. (a) Notwithstanding any other provision of law, the filing of a claim as provided in Part 4 (commencing with Section 9000) of Division 7 shall not be required and a civil action may be maintained by a claimant to establish, to the limits of the insurance protection only, a liability of the decedent for which the decedent was protected by liability insurance.

(b) The claimant shall file a verified petition in the superior court of the county in which the administration of the estate is pending, or if none is pending, in the superior court of the county in which administration may be had as provided in Section 301, alleging (1) the nature and amount of the claim, (2) the decedent was protected, in whole or in part, by liability insurance with respect thereto, (3) the interests of the estate will not be prejudiced, and (4) any recovery in the action by the claimant will be limited solely to the decedent's insurance protection. The court, upon such hearing and notice, if any, as it may order, shall grant leave to the claimant to file the action, unless it finds that the interests of the estate will be prejudiced thereby. However, if it appears that the insurer denies coverage or admits liability only conditionally or with reservation, the court may deny leave to the claimant to file the action.

(c) The action by the claimant shall name as the defendant "Estate of (name of decedent), Deceased." Summons shall be served upon a person designated in writing by the insurer or, if none, upon the insurer. Further proceedings shall be in the name of the estate, but otherwise shall be conducted in the same manner and have the same effect as if the action were against the personal representative. For good cause, the court in which the civil action is pending, upon motion of an interested person or upon its own motion, may order the appointment of a personal representative and the personal representative's substitution as the defendant.

(d) The insurer may deny or otherwise contest its liability by cross-complaint in the action or by an independent action against the claimant, but the judgment on the cross-complaint or in the independent action shall not adjudicate rights of persons who are not parties.

(e) A judgment in favor of claimant in an action pursuant to this section shall be enforceable only from the insurance protection and shall not create a lien upon real or other property in the estate.

(f) The remedies of this section are cumulative, and may be pursued concurrently with other remedies.

ARTICLE 2. EXONERATING ENCUMBERED PROPERTY

736. When a testator devises real property subject to a mortgage, deed of trust, or other lien and the intention is indicated by the will that the mortgage, deed of trust, or other lien is to be exonerated, other property specifically devised or bequeathed shall not be sold for the purpose of exonerating the encumbered property unless a contrary intention that the other property be sold is indicated by the will.

AMENDMENT 9

On page 28, strike out lines 11 to 40, inclusive, and on page 29, strike out lines 1 to 30, inclusive, and insert:

SEC. . Article 4 (commencing with Section 950) of Chapter 15 of Division 3 of the Probate Code is repealed.

SEC. . Article 4 (commencing with Section 956) is added to Chapter 15 of Division 3 of the Probate Code, to read:

ARTICLE 4. PAYMENT OF DEBTS, EXPENSES, AND CHARGES

956. If all of the debts have been paid by the first order for payment, the court must direct the payment of legacies and the distribution of the estate among the persons entitled, as provided in the next chapter; but if there are debts remaining unpaid, or if, for other reasons, the estate is not in a condition to be closed, the administration may continue for such time as may be reasonable.

SEC. . Article 5 (commencing with Section 980) of Chapter 15 of Division 3 of the Probate Code is repealed.

AMENDMENT 10

On page 68, line 8, insert:

CHAPTER 1. GENERAL PROVISIONS

9000. As used in this division:

(a) "Claim" means a demand for payment for any of the following, whether due, not due, or contingent, and whether liquidated or unliquidated:

(1) Liability of the decedent, whether arising in contract, tort, or otherwise.

(2) Liability for taxes incurred before the decedent's death, other than property taxes and assessments secured by real property liens.

(3) Liability of the estate for funeral expenses of the decedent.

(b) "Claim" does not include a dispute regarding title of a decedent to specific property alleged to be included in the decedent's estate.

9001. (a) The publication or posting of notice under Section 333 and the giving of notice of administration of the estate of the decedent under Chapter 2 (commencing with Section 9050) constitute notice to creditors of the requirements of this part.

(b) Nothing in subdivision (a) affects a notice or request to a public entity required by Chapter 5 (commencing with Section 9200).

9002. Except as otherwise provided by statute:

(a) All claims shall be filed in the manner and within the time provided in this part.

(b) A claim that is not filed as provided in this part is barred.

(c) The holder of a claim may not maintain an action on the claim unless the claim is first filed as provided in this part.

9003. A claim that is established under this part shall be included among the debts to be paid in the course of administration.

9004. (a) This part applies in any proceeding commenced on or after July 1, 1988.

(b) The applicable law in effect before July 1, 1988, continues to apply in any proceeding commenced before July 1, 1988, notwithstanding its repeal by the act that enacted this part.

CHAPTER 2. NOTICE TO CREDITORS

9050. (a) If, within four months after the date letters are first issued to a general personal representative, the personal representative has knowledge of a creditor of the decedent, the personal representative shall give notice of administration of the estate to the creditor, subject to Section 9054. The notice shall be given as provided in Section 1215. For the purpose of this subdivision, a personal representative has knowledge of a creditor of the decedent if the personal representative is aware that the creditor has demanded payment from the decedent or the estate.

(b) The giving of notice under this chapter is in addition to the publication or posting of the notice under Section 333.

9051. (a) Except as provided in subdivision (b), the notice shall be given within four months after the date letters are first issued to a general personal representative.

(b) If the personal representative first has knowledge of a creditor less than 30 days before expiration of the time provided in subdivision (a), the notice shall be given within 30 days after the personal representative first has knowledge of the creditor.

9052. The notice shall be in substantially the following form:

NOTICE OF ADMINISTRATION OF
ESTATE OF _____, DECEDENT

Notice to creditors:

Administration of the estate of _____ (deceased) has been commenced by _____ (personal representative) in Estate No. _____ in the Superior Court of California, County of _____. You must file copies of your claim with both the court and the personal representative within four months after _____ (the date letters were issued to the personal representative), or 30 days after the date this notice was mailed to you or, in the case of personal delivery, 30 days after the date this notice was delivered to you, whichever is later, as provided in Section 9100 of the California Probate Code. A claim form may be obtained from the court clerk. For your protection, you are encouraged to file your claim by certified mail, with return receipt requested.

(Date of mailing
this notice)

(Name and address of personal
representative or attorney)

9053. (a) If the personal representative or attorney for the personal representative in good faith believes that notice to a particular creditor is or may be required by this chapter and gives notice based on that belief, the personal representative or attorney is not liable to any person for giving the notice, whether or not required by this chapter.

(b) If the personal representative or attorney for the personal representative in good faith fails to give notice required by this chapter, the personal representative or attorney is not liable to any person for the failure. Liability, if any, for the failure in such a case is on the estate.

(c) Nothing in this chapter imposes a duty on the personal representative or attorney for the personal representative to make a search for creditors of the decedent.

9054. Notwithstanding Section 9050, the personal representative need not give notice to a creditor even though the personal representative has knowledge of the creditor if any of the following conditions is satisfied:

(a) The creditor has filed a claim as provided in this part.

(b) The creditor has demanded payment and the personal representative elects to treat the demand as a claim under Section 9154.

CHAPTER 3. TIME FOR FILING CLAIMS

9100. A creditor shall file a claim before expiration of the the later of the following times:

(a) Four months after the date letters are first issued to a general personal representative.

(b) Thirty days after the date notice of administration is given to the creditor, if notice is given within the time provided in Section 9051.

9101. A vacancy in the office of the personal representative that occurs before expiration of the time for filing a claim does not extend the time.

9102. A claim that is filed before expiration of the time for filing the claim is timely even if acted on by the personal representative or by the court after expiration of the time.

9103. (a) Upon petition by a creditor, the court may allow a claim to be filed after expiration of the time provided in Section 9100 if it appears by clear and convincing evidence that all of the following conditions are satisfied:

(1) The creditor was out of the state during the entire four-month period after the date letters were first issued to a general personal representative.

(2) The creditor did not have knowledge of the administration of the estate within four months after the date letters were first issued to a general personal representative by reason of being out of the state.

(3) The claim does not arise out of the conduct by the creditor of a trade, business, or profession in this state.

(b) The court shall not allow a claim to be filed under this section after the earlier of the following times:

(1) The time the court makes an order for final distribution of the estate.

(2) One year after the date letters are first issued to a general personal representative.

(c) Property distributed under court order and payments otherwise properly made before a claim is filed under this section are not subject to the claim, regardless of whether the claim is later established in whole or in part.

9104. (a) If a claim is filed within the time provided in this chapter, the creditor may later amend or revise the claim, subject to subdivision (b). The amendment or revision shall be filed in the same manner as the claim.

(b) An amendment or revision may not be made to increase the amount of the claim after the time for filing a claim has expired. An amendment or revision may not be made for any purpose after the earlier of the following times:

(1) The time the court makes an order for final distribution of the estate.

(2) One year after letters are first issued to a general personal representative.

CHAPTER 4. FILING OF CLAIMS

9150. (a) A claim may be filed by the creditor or a person acting on behalf of the creditor.

(b) A claim shall be filed with both the court and the personal representative.

(c) A claim is deemed filed when either of the following occurs, whichever is earlier:

(1) A copy of the claim is deposited for filing with the court clerk.

(2) A copy of the claim is mailed or delivered to the personal representative or attorney for the personal representative.

(d) Notwithstanding subdivision (b), the failure of either the court or the personal representative to receive a copy of a properly filed claim does not invalidate the filing so long as the other receives a copy of the claim.

9151. (a) A claim shall be supported by the affidavit of the creditor or a person on behalf of the creditor stating:

(1) That the claim is a just claim.

(2) If the claim is due, the facts supporting the claim, the amount of the claim, and that all payments on and offsets to the claim have been credited.

(3) If the claim is not due or contingent, or the amount is not yet ascertainable, the facts supporting the claim.

(4) If the affidavit is made by a person other than the creditor, the reason it is not made by the creditor.

(b) The personal representative may require satisfactory vouchers or proof to be produced to support the claim. If the creditor includes an original voucher with the claim, the creditor may withdraw the voucher after a copy is attached to the claim.

9152. (a) If a claim is based on a written instrument, either the original or a copy of the original with all endorsements shall be attached to the claim. If a copy is attached, the original instrument shall be exhibited to the personal representative or court or judge on demand unless it is lost or destroyed, in which case the fact that it is lost or destroyed shall be stated in the claim.

(b) If the claim or a part of the claim is secured by a mortgage, deed of trust, or other lien that is recorded in the office of the recorder of the county in which the property subject to the lien is situated, it is sufficient to describe the mortgage, deed of trust, or lien and refer to the date or volume and page of its record.

9153. (a) The Judicial Council may prescribe a form for the claim. Use of a form prescribed by the Judicial Council is deemed to satisfy the requirements of this chapter.

(b) A claim form adopted by the Judicial Council shall inform the creditor that the claim must be filed with both the court and the personal representative.

9154. Notwithstanding any other provision of this part, if a creditor makes a written demand for payment within four months after the date letters are first issued to a general personal representative, the personal representative may waive formal defects and elect to treat

the demand as a claim that is filed and established under this part by paying the amount demanded before the expiration of 30 days after the four-month period if all of the following conditions are satisfied:

- (a) The debt was justly due.
- (b) The debt was paid in good faith.
- (c) The amount paid was the true amount of the indebtedness over and above all payments and offsets.
- (d) The estate is solvent.

CHAPTER 5. CLAIMS BY PUBLIC ENTITIES

9200. (a) Except as provided in this chapter, a claim by a public entity shall be filed within the time otherwise provided in this part. A claim not so filed is barred, including any lien imposed for the claim.

(b) As used in this chapter, "public entity" has the meaning provided in Section 811.2 of the Government Code, and includes an officer authorized to act on behalf of the public entity.

9201. (a) Notwithstanding any other provision of this part, a claim of a public entity arising under a law, act, or code listed in subdivision (b) is barred only after written notice or request to the public entity and expiration of the period provided in the applicable section. If no written notice or request is made, the claim is barred at the time otherwise provided in the law, act, or code.

(b)	<u>Law, Act, or Code</u>	<u>Applicable Section</u>
	Sales and Use Tax Law (commencing with Section 6001 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
	Bradley-Burns Uniform Local Sales and Use Tax Law (commencing with Section 7200 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
	Transactions and Use Tax Law (commencing with Section 7251 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
	Motor Vehicle Fuel License Tax Law (commencing with Section 7301 of the Revenue and Taxation Code)	Section 7675.1 of the Revenue and Taxation Code

Use Fuel Tax Law (commencing with Section 8601 of the Revenue and Taxation Code)	Section 8782.1 of the Revenue and Taxation Code
Motor Vehicle Transportation License Tax Law (commencing with Section 9601 of the Revenue and Taxation Code)	Section 9881.1 of the Revenue and Taxation Code
Personal Income Tax Law (commencing with Section 17001 of the Revenue and Taxation Code)	Section 19266 of the Revenue and Taxation Code
Cigarette Tax Law (commencing with Section 30001 of the Revenue and Taxation Code)	Section 30207.1 of the Revenue and Taxation Code
Alcoholic Beverage Tax Law (commencing with Section 32001 of the Revenue and Taxation Code)	Section 32272.1 of the Revenue and Taxation Code
Unemployment Insurance Code	Section 1090 of the Unemployment Insurance Code
State Hospitals for the Mentally Disordered (commencing with Section 7200 of the Welfare and Institutions Code)	Section 7277.1 of the Welfare and Institutions Code
Medi-Cal Act (commencing with Section 14000 of the Welfare and Institutions Code)	Section 9202 of the Probate Code
Waxman-Duffy Prepaid Health Plan Act (commencing with Section 14200 of the Welfare and Institutions Code)	Section 9202 of the Probate Code

9202. (a) If the decedent has received or may have received health care under the provisions of Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, the personal representative shall give the Director of Health Services notice of the decedent's death in the manner provided in Section 215.

(b) The director has four months after notice is given in which to file a claim.

9203. (a) The written notice or request to a public entity required by this chapter shall be made not later than 90 days after the date letters are first issued to a general personal representative. Failure of a person to give the written notice or request does not affect the validity of any proceeding under this division.

(b) If property in the estate is distributed before expiration of the time allowed a public entity to file a claim, the public entity has a claim against the distributees to the full extent of the public entity's claim, or each distributee's share of the distributed property, whichever is less. The public entity's claim against distributees includes interest at a rate equal to that earned in the Pooled Money Investment Account, Article 4.5 (commencing with Section 16480) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code, from the date of distribution or the date of filing the claim by the public entity, whichever is later, plus other accruing costs as in the case of enforcement of a money judgment.

9204. Nothing in this chapter shall be construed to affect the order of priority of claims provided for under other provisions of law.

9205. This chapter does not apply to liability for the restitution of amounts illegally acquired through the means of a fraudulent, false, or incorrect representation, or a forged or unauthorized endorsement.

CHAPTER 6. ALLOWANCE AND REJECTION OF CLAIMS

9250. (a) When a claim is filed, the personal representative shall allow or reject the claim in whole or in part.

(b) The allowance or rejection shall be in writing. The personal representative shall file the allowance or rejection with the court clerk and give notice to the creditor, together with a copy of the allowance or rejection, as provided in Section 1215.

(c) The allowance or rejection shall contain the following information:

- (1) The name of the creditor.
- (2) The total amount of the claim.
- (3) The date of issuance of letters.

- (4) The date of the decedent's death.
- (5) The estimated value of the decedent's estate.
- (6) The amount allowed or rejected by the personal representative.
- (7) Whether the personal representative is authorized to act under the Independent Administration of Estates Act.

(8) A statement that the creditor has three months in which to act on a rejected claim.

(d) The Judicial Council may prescribe an allowance or rejection form, which may be part of the claim form. Use of a form prescribed by the Judicial Council is deemed to satisfy the requirements of this section.

9251. If the personal representative is not authorized to act under the Independent Administration of Estates Act:

(a) Immediately on the filing of the allowance of a claim, the clerk shall present the claim and allowance to the court or judge for approval or rejection.

(b) On presentation of a claim and allowance, the court or judge may, in its discretion, examine the creditor and others on oath and receive any evidence relevant to the validity of the claim. The court or judge shall endorse on the claim whether the claim is approved or rejected and the date.

9252. (a) If the personal representative or the attorney for the personal representative is a creditor of the decedent, the clerk shall present the claim to the court or judge for approval or rejection. The court or judge may in its discretion require the creditor to file a petition and give notice of hearing.

(b) If the court or judge approves the claim, the claim is established and shall be included with other established claims to be paid in the course of administration.

(c) If the court or judge rejects the claim, the personal representative or attorney may bring an action against the estate. Summons shall be served on the judge, who shall appoint an attorney at the expense of the estate to defend the action.

9253. (a) The filing of a claim tolls the statute of limitations otherwise applicable to the claim until allowance, approval, or rejection.

(b) A claim barred by the statute of limitations may not be allowed by the personal representative or approved by the court or judge.

(c) The allowance or approval of a claim further tolls the statute of limitations during the administration of the estate.

(d) Notwithstanding the statute of limitations otherwise applicable to a claim, an action on a rejected claim shall be commenced within the time prescribed in Section 9257.

9254. (a) The validity of an allowed or approved claim may be contested by any interested person at any time before settlement of the report or account of the personal representative in which it is first reported as an allowed or approved claim. The burden of proof is on the contestant, except where the personal representative has acted under the Independent Administration of Estates Act, in which case the burden of proof is on the personal representative.

(b) Subdivision (a) does not apply to a claim established by a judgment.

9255. (a) The personal representative may allow a claim, or the court or judge may approve a claim, in part. The allowance or approval shall state the amount for which the claim is allowed or approved.

(b) A creditor who refuses to accept the amount allowed or approved in satisfaction of the claim may bring an action on the claim in the manner provided in Section 9257. The creditor may not recover costs in the action unless the creditor recovers an amount greater than that allowed or approved.

9256. If within 30 days after a claim is filed the personal representative or the court or judge has refused or neglected to act on the claim, the refusal or neglect may, at the option of the creditor, be deemed equivalent to the giving of a notice of rejection on the 30th day.

9257. (a) A rejected claim is barred unless the creditor brings an action on the claim or the matter is referred to a referee or to arbitration within the following times, excluding the time during which there is a vacancy in the office of the personal representative:

(1) If the claim is due at the time of giving the notice of rejection, three months after the notice is given.

(2) If the claim is not due at the time of giving the notice of rejection, three months after the claim becomes due.

(b) In addition to any other county in which an action may be brought, an action on the claim may be brought in the county in which the proceeding for administration of the decedent's estate is pending.

(c) The plaintiff shall file a notice of the pendency of the action with the court clerk in the estate proceeding, together with proof of giving a copy of the notice to the personal representative as provided in Section 1215. Personal service of a copy of the summons and complaint on the personal representative is equivalent to the filing and giving of the notice. Any property distributed under court order, or any payment properly made, before the notice is filed and given is not subject to the claim. The personal representative, distributee, or payee is not liable on account of the prior distribution or payment.

(d) If the creditor fails to recover, the creditor shall pay court costs and, in the court's discretion, reasonable litigation expenses, including attorney's fees.

CHAPTER 7. CLAIMS ESTABLISHED BY JUDGMENT

9300. (a) Except as provided in Section 9303, after the death of the decedent all money judgments against the decedent or against the personal representative on a claim against the decedent or estate are payable in the course of administration and are not enforceable against property in the estate of the decedent under the Enforcement of Judgments Law.

(b) Subject to Section 9301, a judgment referred to in subdivision (a) shall be filed in the same manner as other claims.

9301. When a money judgment against a personal representative in a representative capacity becomes final, it conclusively establishes the validity of the claim for the amount of the judgment. The judgment shall provide that it is payable out of property in the decedent's estate in the course of administration. An abstract of the judgment shall be filed in the administration proceedings.

9302. (a) Notwithstanding the death of the decedent, a judgment for possession of property or a judgment for sale of property may be enforced under the Enforcement of Judgments Law. Nothing in this

subdivision authorizes enforcement under the Enforcement of Judgments Law against any property in the estate of the decedent other than the property described in the judgment for possession or sale.

(b) After the death of the decedent, a demand for money that is not satisfied from the property described in a judgment for sale of property shall be filed as a claim in the same manner as other claims and is payable in the course of administration.

9303. If property of the decedent is subject to an execution lien at the time of the decedent's death, enforcement against the property may proceed under the Enforcement of Judgments Law to satisfy the judgment. The levying officer shall account to the personal representative for any surplus. If the judgment is not satisfied, the balance of the judgment remaining unsatisfied is payable in the course of administration.

9304. (a) An attachment lien may be converted into a judgment lien on property in the estate subject to the attachment lien, with the same priority as the attachment lien, in either of the following cases:

(1) Where the judgment debtor dies after entry of judgment in an action in which the property was attached.

(2) Where a judgment is entered after the death of the defendant in an action in which the property was attached.

(b) To convert the attachment lien into a judgment lien, the levying officer shall, after entry of judgment in the action in which the property was attached and before the expiration of the attachment lien, do one of the following:

(1) Serve an abstract of the judgment, and a notice that the attachment lien has become a judgment lien, on the person holding property subject to the attachment lien.

(2) Record or file in any office where the writ of attachment and notice of attachment are recorded or filed an abstract of the judgment and a notice that the attachment lien has become a judgment lien. If the attached property is real property, the plaintiff or the plaintiff's attorney may record the required abstract and notice with the same effect as if recorded by the levying officer.

(c) After the death of the decedent, any members of the decedent's family who were supported in whole or in part by the decedent may claim an exemption provided in Section 487.020 of the Code of Civil Procedure for property levied on under the writ of attachment if the right to the exemption exists at the time the exemption is claimed. The personal representative may claim the exemption on behalf of members of the decedent's family. The claim of exemption may be made at any time before the time the abstract and notice are served, recorded, or filed under subdivision (b) with respect to the property claimed to be exempt. The claim of exemption shall be made in the same manner as an exemption is claimed under Section 482.100 of the Code of Civil Procedure.

AMENDMENT 11

On page 159, line 22, insert:

PART 9. PAYMENT OF DEBTS

CHAPTER 1. DEFINITIONS

11400. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this part.

11401. "Debt" means:

(a) A claim that is established under Part 4 (commencing with Section 9000) or that is otherwise payable in the course of administration.

(b) An expense of administration.

(c) A charge against the estate including, but not limited to, taxes, expenses of last illness, and family allowance.

11402. "Wage claim" means a claim for wages, not exceeding two thousand dollars (\$2,000), of each employee of the decedent for work done or personal services rendered within 90 days before the death of the decedent.

CHAPTER 2. GENERAL PROVISIONS

11420. (a) Debts shall be paid in the following order of priority among classes of debts, except that debts owed to the United States or to this state that have preference under the laws of the United States or of this state shall be given the preference required by such laws:

(1) Expenses of administration.

- (2) Funeral expenses.
- (3) Expenses of last illness.
- (4) Family allowance.
- (5) Wage claims.

(6) Obligations secured by a mortgage, deed of trust, or other lien, including but not limited to a judgment lien, in the order of their priority, so far as they may be paid out of the proceeds of the property subject to the lien. If the proceeds are insufficient, the part of the obligation remaining unsatisfied shall be classed with general debts.

(7) General debts, including judgments not secured by a lien and all other debts not included in a prior class.

(b) Except as otherwise provided by statute, the debts of each class are without preference or priority one over another. No debt of any class may be paid until all those of prior classes are paid in full. If property in the estate is insufficient to pay all debts of any class in full, each debt in that class shall be paid a proportionate share.

11421. As soon as the personal representative has sufficient funds, after retaining sufficient funds to pay expenses of administration and debts owed to the United States or to this state that have preference under the laws of the United States or of this state, the personal representative shall pay the following debts:

- (a) Funeral expenses.
- (b) Expenses of last illness.
- (c) Family allowance.
- (d) Wage claims.

11422. (a) Except as provided in Section 11421, the personal representative is not required to pay a debt until payment has been ordered by the court.

(b) On the settlement of any account of the personal representative after the expiration of four months after the date letters are first issued to a general personal representative, the court shall order payment of debts, as the circumstances of the estate permit. If property in the estate is insufficient to pay all of the debts, the order shall specify the amount to be paid to each creditor.

(c) If the estate will be exhausted by the payment ordered, the account of the personal representative constitutes a final account, and notice of hearing shall be the notice given for the hearing of a final account. The personal representative is entitled to a discharge when the personal representative has complied with the terms of the order.

(d) Nothing in this section precludes settlement of an account of a personal representative for payment of a debt made without prior court authorization.

11423. (a) Interest accrues on a debt from the date the court orders payment of the debt until the date the debt is paid. Interest accrues at the legal rate on judgments.

(b) Notwithstanding subdivision (a), in the case of a debt based on a written contract, interest accrues at the rate and in accordance with the terms of the contract. The personal representative may, by order of the court, pay all or part of the interest accumulated and unpaid at any time when there are sufficient funds, whether the debt is then due or not.

(c) Notwithstanding subdivision (a), in the case of a debt for unpaid taxes or any other debt for which interest is expressly provided by statute, interest accrues at the rate and in accordance with the terms of the statute.

11424. (a) The personal representative shall pay a debt to the extent of the order for payment of the debt, and is liable personally and on the bond, if any, for failure to make the payment.

(b) An order for payment of a debt may be enforced in the same manner as enforcement of a money judgment under the Enforcement of Judgments Law.

11425. If a creditor whose debt is not due waives interest for the time until the debt is due, the creditor is entitled to payment of the debt.

11426. (a) Notwithstanding any other statute, the court may in its discretion appoint a trustee to whom payment of a debt that is contingent or is payable in installments shall be made, with the direction that the trustee invest the payment in investments that would be proper for a personal representative or as authorized by the court.

The court in determining the amount of the payment shall compute the present value of the debt, giving consideration to a reasonable interest rate on the amount to be invested.

(d) The trustee shall pay the debt as ordered by the court. On completion of payment, any excess in possession of the trustee shall be paid or distributed in accordance with the order for distribution.

11427. Except as otherwise provided in this part, if a debt is not due or is contingent, or if a claim is disputed, the amount of the debt or claim or the part that would be payable if the debt were due or absolute or the claim established, shall be paid into court. The amount paid into court shall remain there, to be paid to the creditor when the debt is due or absolute or the claim is established or, if the claim is not established, to be paid or distributed as the circumstances of the estate require.

11428. (a) If an estate is in all other respects ready to be closed, and it appears to the satisfaction of the court, on affidavit or evidence taken in open court, that a debt has not been and cannot be paid because the creditor cannot be found, the court or judge shall make an order fixing the amount of the payment and directing the personal representative to deposit the payment with the county treasurer of the county in which the proceeding is pending.

(b) The county treasurer shall give a receipt for the deposit, for which the county treasurer is liable on the official bond. The receipt shall be treated by the court or judge in favor of the personal representative with the same force and effect as if executed by the creditor.

(c) A deposit with the county treasurer under the provisions of this section shall be received, accounted for, and disposed of as provided by Section 1444 of the Code of Civil Procedure. A deposit in the State Treasury under the provisions of this section shall be deemed to be made under the provisions of Article 1 (commencing with Section 1440) of Chapter 6 of Title 10 of Part 3 of the Code of Civil Procedure.

11429. (a) Where the accounts of the personal representative have been settled and an order made for the payment of debts and distribution of the estate, a creditor who is not paid has no right to require contribution from creditors who are paid or from distributees.

(b) Nothing in this section precludes recovery against the personal representative personally or on the bond, if any, by a creditor who is not paid.

CHAPTER 3. ALLOCATION OF DEBTS BETWEEN ESTATE AND SURVIVING SPOUSE

11440. If it appears that a debt of the decedent has been paid or is payable in whole or in part by the surviving spouse, or that a debt of the surviving spouse has been paid or is payable in whole or in part from property in the decedent's estate, the personal representative, the surviving spouse, or a beneficiary may, at any time before an order for final distribution is made, petition for an order to allocate the debt.

11441. The petition shall include a statement of all of the following:

(a) All debts of the decedent and surviving spouse known to the petitioner that are alleged to be subject to allocation and whether paid in whole or part or unpaid.

(b) The reason why the debts should be allocated.

(c) The proposed allocation and the basis for allocation alleged by the petitioner.

11442. If it appears from the petition that allocation would be affected by the value of the separate property of the surviving spouse and any community property and quasi-community property not administered in the estate and if an inventory and appraisal of the property has not been provided by the surviving spouse, the court shall make an order to show cause why the information should not be provided.

11443. The petitioner shall give notice of the hearing as provided in Section 1220, together with a copy of the petition and the order to show cause, if any.

11444. (a) The personal representative and the surviving spouse may provide for allocation by agreement and, on a determination by the court that the agreement substantially protects the rights of interested persons, the allocation provided in the agreement shall be ordered by the court.

(b) In the absence of an agreement, each debt of the decedent shall be apportioned based on all of the property of the spouses liable for the debt at the date of death that is not exempt from enforcement of a money judgment, in the proportion determined by the value of the property less any liens and encumbrances at the date of death, adjusted to take into account any right of reimbursement that would have been available if the property were applied to the debt at the date of death, and the debt shall be allocated accordingly.

11445. On making a determination as provided in this chapter, the court shall make an order that:

(a) Directs the personal representative to make payment of the amounts allocated to the estate by payment to the surviving spouse or creditors.

(b) Directs the personal representative to charge amounts allocated to the surviving spouse against any property or interests of the surviving spouse that are in the possession or control of the personal representative. To the extent that property or interests of the surviving spouse in the possession or control of the personal representative are insufficient to satisfy the allocation, the court order shall summarily direct the surviving spouse to pay the allocation to the personal representative

11446. Notwithstanding any other statute, funeral expenses and expenses of last illness shall be charged against the estate of the decedent and shall not be allocated to, or charged against the community share of, the surviving spouse, whether or not the surviving spouse is financially able to pay the expenses and whether or not the surviving spouse or any other person is also liable for the expenses.

AMENDMENT 12

On page 160, following line 40, insert:

SEC. . Section 19265 of the Revenue and Taxation Code is amended to read:

19265. Every fiduciary who pays in whole or in part any claim, other than claims for taxes, expenses of administration, funeral expenses, expenses of last illness, and family allowance, or wage claims as defined in Section 11402 of the Probate Code, against the

person, estate, or trust for whom or for which he the fiduciary acts, or who makes any distribution of the assets of the person, estate, or trust, before he ~~satisfies and pays~~ satisfaction and payment of taxes, interest, and penalties, except penalties due from a decedent, which are imposed by this part on the person, estate, or trust for whom or for which he the fiduciary acts, or which constitute a claim against ~~sueh~~ the person, estate, or trust, or which are a lien or charge on or against the assets of ~~sueh~~ the person, estate, or trust, is personally liable to the State for the taxes, interest, and penalties to the extent of ~~sueh~~ the payments and distributions.