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IN THE  
SUPREME COURT OF THE UNITED STATES

\* \* \*

October Term, 1981

\* \* \*

STATE OF CALIFORNIA,

*Plaintiff,*

VS.

STATE OF TEXAS, *et al.*,

*Defendants.*

\* \* \*

ANSWER OF THE STATE OF TEXAS

\* \* \*

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## TABLE OF CONTENTS

	Page
I. RESPONSE TO COMPLAINT .....	1
II. DEFENSES .....	5
III. ABSTENTION AND ABATEMENT .....	7
IV. COUNTERCLAIM .....	9
V. JURY DEMAND .....	11
VI. PROOF OF SERVICE .....	13



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ANSWER OF THE STATE OF TEXAS

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The State of Texas, appearing through its duly authorized representative, Mark White, Attorney General, on behalf of its Comptroller of Public Accounts, Bob Bullock, answers in response to the Complaint of the State of California as follows:

I.

RESPONSE TO COMPLAINT

1. The State of Texas ("Texas") denies all of paragraph 1 of the Complaint with the exceptions that Texas admits that both Texas and the State of Califor-

nia ("California") are seeking to impose a domicile-based inheritance tax upon the estate of Howard Robard Hughes, Jr. ("the Estate"), that each state claims a lien upon the assets of the Estate, and that Texas has not appeared and will not voluntarily appear in any California court to resolve this matter.

2. Texas admits the factual allegations contained in paragraphs 2(a) and 2(b) of the Complaint with the exception that Texas denies that the Claims of the Howard Hughes Medical Institute ("HHMI") have been finally or completely adjudicated. Texas can neither admit nor deny the allegations in paragraph 2(c) of the Complaint. The ultimate viability of a statutory interpleader action in a federal district court is still before this Court in the petition for rehearing filed herein by Texas.

3. Texas admits the factual allegations contained in paragraphs 3 through 10 of the Complaint.

4. Texas admits the first sentence of paragraph 11 of the Complaint although by such admission does not mean to admit that the parties to the agreement referred to are the only heirs of Hughes. Texas can neither admit nor deny the allegations contained in the remainder of paragraph 11 of the Complaint, as such constitute conclusions of law based upon the law of the State of California.

5. Texas admits the allegations contained in paragraph 12 of the Complaint.

6. Texas admits the first sentence of paragraph 13 of the Complaint. Texas further admits the first phrase of the second sentence, that Hughes resided in Texas until 1926, but Texas denies that Hughes ever became a California domiciliary. Texas denies the third sentence in paragraph 13. Texas admits that Hughes filed non-resident income tax returns in California but can neither

admit nor deny that Hughes paid tax on all his income as alleged in the fourth sentence of paragraph 13 of the Complaint. Texas denies the fifth sentence in paragraph 13 and admits the sixth sentence in said paragraph, emphasizing that Hughes acquired no domicile other than Texas at any time during his life. Texas denies the seventh sentence of paragraph 13 and admits the allegations contained in the eighth and last sentence of paragraph 13 of the Complaint.

7. Texas admits the allegations contained in paragraph 14 of the Complaint.

8. Texas admits all allegations contained in paragraph 15 of the Complaint with the exception of the last sentence, which Texas denies, and specifically avers that California is a party to the Texas proceedings and will be bound by any judgment entered therein.

9. Texas can neither admit nor deny the allegations contained in paragraph 16 of the Complaint for the reason that these are allegations based upon California's statutory and procedural law and of facts of which Texas has insufficient knowledge to make an affirmative response.

10. Texas admits the allegations contained in paragraph 17 of the Complaint.

11. Texas admits all of the allegations contained in paragraph 18 of the Complaint with the exception of the last sentence. The Controller of the State of California was a named defendant in the Delaware suit to which this paragraph refers.

12. Texas denies the allegations in the first sentence of paragraph 19 of the Complaint that the issue of decedent's domicile is pending in the courts of California but admits that this issue is pending in the courts of Texas.

Texas admits that it will not become a party to any proceedings in California's courts but denies the allegation in paragraph 19 that California has not become a party to the proceedings in the Texas courts. Texas further denies that findings of domicile in the courts of either state would not be subject to review by the Supreme Court.

13. Texas admits the allegations contained in paragraph 20 of the Complaint.

14. Texas admits the allegations contained in paragraph 21 of the Complaint with the exception that Texas denies the allegation therein that the premise of the Court of Appeals that the Los Angeles County Treasurer is a "claimant" to any part of the Hughes estate is now clearly incorrect. Texas further denies the allegation contained in the last sentence of paragraph 21 of the Complaint.

15. Texas admits the allegations contained in the first, third, fifth, sixth, seventh and eighth sentences in paragraph 22 of the Complaint and denies the allegations contained in the second, fourth, and ninth sentences in said paragraph 22.

16. Texas admits the allegations contained in the first and third sentences in paragraph 23 of the Complaint. Texas can neither admit nor deny the allegations contained in the second sentence of paragraph 23, and Texas denies the allegation in the last sentence of paragraph 23 that the claim of Texas is wholly inconsistent with the claim of California.

17. Texas admits the allegations contained in the first and second sentences of paragraph 24 of the Complaint and denies the allegations contained in the last sentence of paragraph 24.



18. Texas denies the allegations contained in paragraph 25 of the Complaint.

19. Texas admits the allegations contained in the second, third and fourth sentences of paragraph 26 of the Complaint and denies the allegations contained in the first sentence and the remainder of said paragraph.

20. Texas can neither admit nor deny the allegations contained in paragraph 27 of the Complaint.

## II.

### DEFENSES

21. This Court lacks subject matter jurisdiction over this action under Article III, Section 2 of the Constitution of the United States and 28 U.S.C. §1251(a) because it presents no controversy between two or more states. The dispute which each state has with the Estate concerning its liability for state death taxes presents no case or controversy between the two states themselves. The mere possibility of different state court determinations of Hughes' domicile does not give rise to a case or controversy in the constitutional sense and certainly presents no controversy between states within this Court's original jurisdiction. Furthermore, because the value of the assets of the Estate has at all relevant times exceeded the total federal and state estate and inheritance taxes and interest claimed, the full collection by Texas of its claimed death taxes and interest will in no way impair California's ability to collect any death tax judgment it might obtain against the Estate. Consequently, no case or controversy between California and Texas exists.

22. This action, which was not brought to remedy any dispute between states but rather to facilitate settlement of a dispute with the Estate, is an unconsented

suit against the State of Texas that is beyond the scope of the judicial power of the United States and is barred by the doctrine of sovereign immunity.

23. On April 10, 1978, a final judgment was issued by Probate Court No. 2 of Harris County, Texas in cause no. 139, 362 (*In re Estate of Howard Robard Hughes, Jr., Deceased*) to the effect that Texas was the domicile of Hughes for all purposes at the time of his death. All known potential heirs of Hughes, including all parties listed in paragraphs seven through ten of the Complaint, were parties to that Texas court proceeding. Of those parties, only William Rice Lummis and Annette Gano Lummis, deceased, as Co-Temporary Administrators of the Estate, appealed from the Texas judgment. At least as to all potential heirs of Hughes who failed to perfect an appeal in that case, that judgment was final before the institution of the present action, must be given full faith and credit by this Court pursuant to 28 U.S.C. §1738, and must be given full effect under the doctrines of res judicata and collateral estoppel.

24. Pursuant to Article 14.18, Tex. Tax.-Gen. Ann. (1969), the heirs of Hughes are personally liable for the Texas inheritance tax. Those heirs who failed to appeal from the Texas judgment are forever bound to the determination that Hughes was a domiciliary of Texas at the time of his death for purposes of liability for the Texas inheritance tax. Because that final judgment must be given full faith and credit by this Court and the courts of all sister states, Texas can always collect its inheritance tax on the Estate from those heirs, who are parties to this suit. To the extent California seeks to restrain Texas from collecting its inheritance tax on the Estate, the Complaint therefore fails to state a claim upon which relief can be granted.

25. On June 10, 1976, approximately two months after Hughes' death, the State of Texas entered an ap-

pearance in cause no. 139, 362 (*In re Estate of Howard Robard Hughes, Jr., Deceased*) seeking a determination that Hughes was domiciled in Texas at the time of his death. During the subsequent seventeen months, Texas gathered, reviewed and organized for trial more than fifty thousand documents relevant to Hughes' domicile. Scores of motions were filed, briefed, heard and ruled upon; countless witnesses were interviewed; and more than fifty depositions were taken. Assistant Attorneys General of Texas traveled to New York, California, Utah, Nevada, Arizona, Maryland, Virginia, the District of Columbia, Mexico and Canada taking depositions, interviewing witnesses and securing documents, all in preparation for the Texas domicile trial, which began in November of 1977. Until virtually the eve of the domicile trial in Houston, California made no attempt to advise Texas that it would also seek to impose domicile-based death taxes on the Estate. California's lengthy delay in asserting any claim for death taxes, coupled with its knowledge of the Texas tax claim and efforts in Texas state court to obtain a judgment on such claim, bars this action under the doctrine of laches.

### III.

#### ABSTENTION AND ABATEMENT

26. If jurisdiction over this action exists, the Court should abstain from exercising such jurisdiction and abate this proceeding pending the outcome of state court litigation which will resolve this dispute.

(a) An alternative forum exists where the domicile issue tendered here can be resolved in a proceeding in which all material parties to this original action have already appeared. The Estate, all potential heirs of Hughes, and the taxing officials of both California and Texas have entered a general appearance in the ongoing probate proceeding in Harris County Probate Court No.

2 in which such court is determining all matters incident to the estate of Howard R. Hughes, Jr. The California taxing officials entered a general appearance in that proceeding in July of 1981, and such proceeding offers a forum in which all parties to this action can simultaneously litigate their domicile claims. In the interest of comity and federalism, this Court should abstain from exercising any jurisdiction it might have over this action and remit the parties hereto to this alternative state court forum.

(b) Alternatively, the state courts of California provide a likely end to any potential interstate conflict over the death taxes at issue here. For if California cannot obtain a judgment in its own courts that Hughes died domiciled there, California will have no tax judgment to collect and cannot be harmed by the collection of the Texas tax judgment from the assets of the Estate. In the interest of comity and federalism, this Court should abstain from exercising jurisdiction in this case and abate this proceeding pending the outcome of a California state court domicile trial in which an Estate victory would end all possibilities of double taxation and interstate conflict. In deference to the state courts of California and Texas, and especially in light of the existing state court judgment of Texas domicile, this Court should abate this proceeding to see whether California can obtain a judgment in its own Court that Hughes was domiciled there at death.

(c) Various state court determinations of heirship and the validity of several wills, such as the HHMI lost will and the Graves will—each of which have sizable charitable bequests that would substantially reduce or eliminate state death tax claims—are still pending in various state courts. Because the state court resolutions of these issues could also obviate the need for this Court to exercise its extraordinary original jurisdiction, this action should be abated pending the outcome of these state proceedings.

(d) Because these various state court proceedings would eliminate any danger that California might not be able to collect any valid tax judgment it might obtain, California has adequate remedies at law and is therefore not entitled to the equitable relief sought here.

#### IV.

### COUNTERCLAIM

27. If the Court determines that it has and should exercise jurisdiction over this action, the State of Texas alleges that Howard Robard Hughes, Jr. was born in Texas and that Texas was Hughes' domicile of origin.

(a) Mr. Hughes was born in Houston, Texas, on December 24, 1905. His father was an inventor and manufacturer. His mother, a member of a prominent family that settled in Texas in 1856, died in 1922. When his father died in 1924, a Houston court removed the disability of minority from the nineteen-year old Hughes and allowed him to take control of Hughes Tool Company, a Houston corporation that manufactured oil well equipment.

(b) In June of 1925 Mr. Hughes married Ella Botts Rice, a member of the distinguished Houston family for whom Rice University is named. Mr. Hughes developed interests in filmmaking and aviation and began making trips to Los Angeles, California to pursue those avocations. By 1929, when Mrs. Hughes obtained a divorce in Houston, Mr. Hughes had begun to spend a considerable amount of his time in southern California. For the next two decades he traveled extensively, spending much of his time making cross-country test flights. While Mr. Hughes based his aviation and movie activities in California, he spent much of his time traveling during this period, predominantly on the East Coast.

(c) In 1940 Mr. Hughes registered with a Houston draft board and was given a deferment to continue his airplane and armament manufacturing in Texas and California during World War II. In sworn testimony in 1947 before a Senate committee investigating claims of profiteering on wartime contracts, he gave his residence as Houston, Texas and stated that his company was headquartered there. He expressed disdain at the attempt to impugn his integrity, stating, "I believe I have the reputation in that respect which most Texans consider important. This is to say, if I may use a corny phrase, I believe people consider my word to be my bond." Testifying in a state court civil trial in California in 1952, Mr. Hughes stated that although he was then staying at the Beverly Hills Hotel, his domicile was Houston, Texas.

(d) From 1950 until 1966 Mr. Hughes spent much of his time in California, although he was also in Nevada, Florida, Canada and the Bahamas for significant periods of time. The majority of his time in California during this period was spent at the Beverly Hills Hotel, where he rented rooms on a day-to-day basis.

(e) From 1966 until his death, Mr. Hughes stayed in hotels in Boston, Las Vegas, the Bahamas, Nicaragua, Vancouver, London and Acapulco. Throughout his travels—indeed, throughout his entire life—Hughes listed Houston, Texas as his residence on his passports, on all of his federal income tax returns, and on all state income tax returns he was required to file. On April 5, 1976, Mr. Hughes was placed aboard a private jet in Acapulco, Mexico, bound for Methodist Hospital in Houston, Texas. He died en route shortly after the plane passed over Brownsville, Texas. Mr. Hughes was buried beside his parents in Houston's Glenwood Cemetery. He had maintained his family burial plot since his father's death in 1924 but did not finally purchase a perpetuity deed thereon until 1973, soon after he

had undergone major surgery in London for a hip injury that was to keep him bedridden for the remaining three years of his life.

(f) Earnings from the Houston based Oil Tool Division of Hughes Tool Company were the primary source of Hughes' wealth.

28. Hughes never changed his domicile from his Texas domicile of origin or, alternatively, effected a domicile of choice in Texas before the time of his death. In all events, Hughes was domiciled in Texas at the time of his death on April 5, 1976.

## V.

### JURY DEMAND

29. Texas respectfully demands a trial by jury as to the issue of the domicile of Hughes at the time of his death.

WHEREFORE, PREMISES CONSIDERED, the State of Texas prays that the Court:

(a) dismiss this action;

(b) alternatively, abate this action pending the resolution of the Houston probate proceeding, a California state court domicile trial, and/or other state court estate litigation;

(c) alternatively, declare that Texas was the domicile of Hughes on the date of his death for purposes of death taxation and that the statutory lien on intangible assets of the Estate claimed by California is invalid;

(d) alternatively, determine the relative merits of

the domicile claims at issue and apportion the remaining assets of the Estate, after the payment of federal estate taxes and interest, between California and Texas as may appear just;

(e) grant a trial by jury as to the issue of domicile; and

(f) grant such other and further relief as may be just and proper.

DATED: August \_\_\_\_\_, 1982.

Respectfully submitted,

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*\*Counsel of Record*

## PROOF OF SERVICE

I, Rick Harrison, a member of the Bar of this Court, do hereby certify that three true and correct copies of the above and foregoing Answer of the State of Texas have been served on each of the following by depositing the same in a United States post office, with firstclass postage prepaid, certified, return receipt requested, on this \_\_\_\_\_ day of August, 1982, addressed as follows:

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Sacramento, California 95814

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