220.0768 **Trusts.** A transfer of property to an irrevocable trust or to a revocable trust followed by a transfer to a beneficiary who is the child of the trustor(s) can qualify for the parent/child exclusion of Revenue and Taxation Code section 63.1. C 9/4/87.

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-6594

WILLIAM M. BENNETT
First District, Kentfield

CONWAY H. COLLIS
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

PAUL CARPENTER
Fourth District, Los Angeles

GRAY DAVIS
Controller, Sacramento

DOUGLAS D. BELL
Executive Secretary

September 4, 1987

Dear

This is in response to your letter to James J. Delaney dated July 28, 1987 in which you request our opinion that Proposition 58 is applicable to exclude from change in ownership the following transfer as described in your letter:

You are an attorney, and you practice estate planning in Orange County. Some years ago you created a revocable, living trust for clients. The clients transferred certain real property located in California to their trust, pursuant to your instructions, in order to avoid the necessity of a probate procedure at their deaths and to save death taxes for their children. The trust can be amended or revoked at any time during the joint lifetime of the trustors. The clients were named as trustors and trustees of their family trust. The property transferred to the trust was the community property of the trustors, and the provisions of the trust do not alter the community character of the property, even though title is changed from their names as individuals to their names as trustees.

In December of 1986, the clients notified you that they would like to make a gift of the real property that had been transferred to the trust, to their children, exempt from reassessment, under the provisions of Proposition 58. The trust agreement includes a special provision allowing the trustors to direct the trustees to make gifts directly from the trust to the donee. You prepared a document, executed by the clients, directing the trustees to make a gift of the real property directly to the children of the trustors. The documents were signed, and You prepared a deed, executed by the trustees, conveying the real property, at the direction of the trustors, from the revocable living trust to the trustors' children, as individuals. The full cash value of the real property was less than $1,000,000 at all relevant times.

In support of your contention that the transfer in question is excluded from change in ownership, you argue essentially that since the trustees could have transferred the property back to the trustors without a change in ownership pursuant to Revenue and Taxation Code* section 62(d) and since the trustors could then have transferred the property to their children without a change in ownership pursuant to section 63.1, that under the liberal construction required of section 63.1, the transfer in question should be excluded under section 63.1

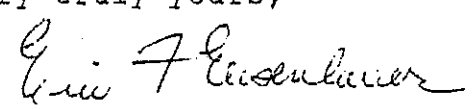
We agree that the transfer is excluded under section 63.1 but not for the reasons you state. We believe that as a general rule, a taxpayer must accept the tax consequences of what he has done even though the tax consequences would have been less severe had he chosen a different method. Freeman v. C.I.R. (1962) 303 F.2d 580, 584.

We have previously concluded that transfers of real property through the medium of a testamentary trust were transfers between parents and children within the meaning of Proposition 58 and section 63.1. (Enclosed for your information is a copy of our letter of June 19, 1987 wherein we reached that conclusion.) For the reasons stated in that letter, we believe the same is true in this case. Prior to the transfer in this case, the trustors were the beneficial owners of the property because of their power to revoke. After the transfer, their children were the beneficial (and legal) owners of the property. In our opinion, the transfer is therefore excluded from change in ownership under section 63.1 as a transfer between parents and children.

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. You may wish to consult the appropriate assessor in order to confirm that the described property will be assessed in a manner consistent with the conclusion stated above.

If we can be of further assistance regarding this matter, please let us know.

Very truly yours,



Eric F. Eisenlauer
Tax Counsel

Enclosure
EFE:cb
0675D

*All statutory references are to the Revenue and Taxation Code unless otherwise indicated.