

220.0770 **Trusts.** The transfer of property to an irrevocable trust is not a change in ownership if the transferor/settlor is the sole beneficiary of the trust. On termination of the trust, either because of the death of the sole beneficiary or the passage of a time period specified in the trust instrument, a transfer to an "eligible transferee" son or daughter is excluded from change in ownership under Revenue and Taxation Code section 63.1 if all the other requirements for exclusion are met. If the contingent beneficiary son or daughter does not survive the expiration of the trust and the trust assets transfer to the child's estate, the parent/child exclusion is inapplicable. C 9/28/90.



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September 28, 1990

Dear

This is in response to your letter of September 14, 1990, requesting advice on the application of Proposition 58 to a proposed transaction involving the Irrevocable Trust of 1990.

The proposed transaction involves the transfer of property by the settlor, to an irrevocable trust. The settlor's interest in the trust shall terminate on the first to occur of 7-1/2 years after the agreement is signed or the death of the settlor. The trust will be funded in part by settlor's residence located at 35 San Francisco. During the term of the settlor's interest the settlor shall have the right to occupy the San Francisco residence and to receive the net income of the trust if any. If the trust terminates 7-1/2 years after the trust is signed, and settlor's son, , survives, the trust property shall be distributed to him free of trust. If dies before the termination of the trust, the trustee shall distribute the trust estate free of trust to estate. If the trust terminates by reason of settlor's death, the settlor may exercise a general power of appointment and appoint the trust assets in accordance with the settlor's last Will. If the settlor does not exercise her general power of appointment, all of the trust not so disposed of shall be distributed to a trust for son's benefit under an inter vivos trust established by settlor, or, if that trust is not in existence, outright to Mark. A copy of the proposed trust was attached to your letter.

Set forth below in order are the three questions presented in your letter followed by our comments.

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- (1) WILL THE TRANSFER BY THE SETTLOR OF THE RESIDENCE INTO THE TRUST BE EXEMPT FROM REASSESSMENT?

COMMENT:

In effect, your question asks whether the settlor's transfer of her residence to the trust will be excluded from change in ownership for property tax purposes. The term "change in ownership" is defined by Revenue and Taxation Code Section 60 (all section references are to the Revenue and Taxation Code unless otherwise indicated) as a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest. Further, as noted in your letter, subdivision (d) of section 62 excludes from change in ownership any transfer by the trustor into a trust for so long as the transferor is the present beneficiary of the trust. See also Property Tax Rule 462 (18 California Code of Regulations Section 462, subdivision (i)(2)(A) which similarly provides that a transfer to a trust is not a change in ownership if the trustor-transferor is the sole beneficiary of the trust. Since under the terms of the proposed Irrevocable Trust of 1990, the settlor-transferor, would be the sole present beneficiary, her transfer of the residence to the trust would be excluded from change in ownership by these provisions.

- (2) IF THE TRUST TERMINATES 7-1/2 YEARS AFTER THE TRUST IS SIGNED, WILL THE LIFE ESTATE IN TRUST FOR THE BENEFIT OF THE SETTLOR'S SON BE EXEMPT FROM REASSESSMENT?

COMMENT:

As discussed in your letter, Proposition 58 added subdivision (h) to section 2 of article XIII A of the California Constitution, providing that "change in ownership" shall not include the transfer of the principal residence of the transferor in the case of a transfer between parents and their children. It also provides for a similar exclusion for the transfer of the first \$1 million of the full cash value of all other real property transferred between parents and their children. These provisions are implemented by section 63.1 which contains the various requirements applicable to the parent/child change in ownership exclusion. Subdivision (a)(1) excludes the transfer of real property which is the principal residence of an eligible transferor in the case of a parent/child transfer. Subdivision (c)(7) defines "transfer" as including any transfer of the present beneficial ownership of property from an eligible transferor to an eligible

transferee through the medium of an inter vivos or testamentary trust. The terms "eligible transferor" and "eligible transferee" are defined in subdivisions (c)(4) and (5) as a parent or child of an eligible transferee or transferor, respectively.

Under the proposed terms of the trust, it will terminate 7-1/2 years after the date it is signed and the trust estate will be distributed either (1) to Mark free of trust / survives the termination of the trust, or (2) to /estate free of trust / does not survive the termination of the trust. In the event / survives the termination of the trust and receives the trust estate, this would be a "transfer" within the terms of section 63.1, subdivision (c)(7), since it is the transfer of the present beneficial ownership of the property from an eligible transferor to an eligible transferee through the medium of an inter vivos trust. Assuming that the other requirements of section 63.1 are satisfied, that is the property is either the transferor's principal residence or is the first \$1 million of full cash value of other real property, a timely claim for exclusion is filed, etc., we conclude that the transfer to / of real property pursuant to the terms of the proposed trust would be excluded from change in ownership. If Mark fails to survive the trust and the trust estate is distributed to Mark's estate, however, the estate property will presumably be distributed to / heirs. Since nothing in the information submitted indicates that the property would be distributed to an eligible transferee, we conclude that the parent/child change in ownership exclusion would not apply in this event.

(3) IF THE SETTLOR DIES DURING THE 7-1/2 YEAR PERIOD, WILL THE TRANSFER BE EXEMPT FROM REASSESSMENT?

COMMENT:

The terms of the proposed trust provide that if the trust terminates by reason of the settlor's death, the settlor may exercise a general power of appointment and appoint the trust assets in accordance with the settlor's last Will. Obviously, the effect of any distribution of the trust property pursuant to the settlor's Will would depend upon the terms of that instrument. Unless the property is distributed to an eligible transferee, the parent/child exclusion would not apply.

The proposed trust further provides that if the settlor does not exercise her general power of appointment, all of the trust property not so disposed of shall be distributed to an inter vivos trust established by the settlor for

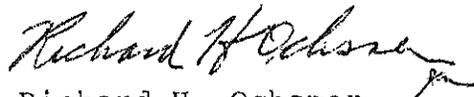
benefit. If that trust is not in existence, then the property will be distributed outright to [redacted]. As discussed above, the distribution of the trust property to Mark would qualify for the parent/child exclusion assuming that the various requirements of section 63.1 are otherwise satisfied. Since no details regarding the terms of the inter vivos trust for [redacted] have been furnished, we are unable to provide any firm conclusion as to the effect of the distribution to that trust. Assuming that the distribution to that trust would result in the transfer of the present beneficial ownership of the property to [redacted], then the transfer would apparently satisfy the terms of section 63.1, subdivision (c)(7), and the transfer would qualify for the parent/child exclusion.

In short, if [redacted] receives the present beneficial ownership of the property either by virtue of outright transfer to him or by virtue of transfer to a trust in which he is the present beneficiary, the property would be treated as having been transferred from an eligible transferor to an eligible transferee and would thus qualify for the exclusion.

The views expressed herein are advisory only and are not binding upon any county assessor. You may wish to discuss this matter with the San Francisco County Assessor in order to determine whether he will treat the subject property in a manner consistent with the conclusions expressed above.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,



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RHO:sp
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cc: Honorable Samuel Duca
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Mr. John Hagerty
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