



STATE OF CALIFORNIA

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September 20, 1988

Re: Exemption From Reassessment

Dear Mr.

This is in response to your letter of September 6, 1988, to Mr. James K. McManigal in which you request our opinion as to whether a transfer of real property to a trust under the following circumstances described in your letter was a change in ownership requiring reappraisal for property tax purposes.

The real property in question was transferred by A and B, a married couple, each as to an undivided one-half interest, to themselves as trustees of an irrevocable trust. Under the terms of the trust, A and B are equal income beneficiaries and as such are entitled equally to the entire net income of the trust payable in monthly or other convenient installments no less frequently than annually. The trust is to terminate after three years or when both A and B have died if that occurs earlier. On termination of the trust, the trust estate is to be distributed to the son of A and B.

A change in ownership is defined by Revenue and Taxation Code¹ section 60 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." Section 62 provides in relevant part, however, that "change in ownership shall not include: [¶] (d) [a]ny transfer by the trustor, or by the trustor's spouse, or by both, into a trust for so long as (1) the transferor is the present beneficiary of the trust, ... or any transfer by a trustee of such a trust . . . back to the trustor; . . . "

Since A and B are the present income beneficiaries of the trust, the transfer of real property to the trust by A and B is excluded from change in ownership by section 62(d).

When the trust terminates and the property is distributed to the son of A and B, it is our opinion that such transfer is between parents and their child for purposes of Proposition 58 and section 63.1, which, subject to specified limitations, is excluded from change in ownership. See enclosed Letter to Assessors dated September 11, 1987 (LTA 87/72) Question 9).

¹ All statutory reference are to the Revenue and Taxation Code unless otherwise indicated.

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However, if the property is distributed to a person other than A or B or a parent or child of A or B when the trust terminates, a change in ownership will occur at such time.

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. It is within the power of the assessor to determine how property located within his jurisdiction should be appraised.

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

Very truly yours,

Eric f. Eisenlauer
Tax Counsel

EFE/rz

Enclosure

cc: Mr. Richard H. Ochsner
Mr. Robert Gustafson
Mr. Verne Walton

2020/4H