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FAX (916) 323-3387

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November 5, 1999

Honorable Dick Frank
San Luis Obispo County Assessor
Attn: Ms. Barbara Edginton
County Government Center, Room 100
San Luis Obispo, CA 93408

Re: **Change in Ownership – Identifying "Present" Trust Beneficiaries**

Dear Mr. Frank:

This letter is in response to your December 28, 1998 letter to Mr. Lawrence Augusta, requesting our opinion concerning the identity of beneficiaries in the irrevocable ("RHM") Remainder Trust and the change in ownership provisions that apply. Please accept our apologies for the delay, due in part to circumstances beyond our control. Based on your letter and the trust instruments submitted, the facts are as follows:

Factual Circumstances

A few days before she died, RHM executed the RHM Revocable Living Trust establishing the RHM Remainder Trust ("Remainder Trust"), which would become irrevocable upon her death. RHM died on July 19, 1998.

Remainder Trust Paragraphs 9.1 and 9.2 name three classes of beneficiaries:

1) the "Designated Beneficiaries" the two children of RHM, Keith and Ann;
2) "Other Beneficiaries" named by the Settlor in the Trust or by amendment thereto; and
3) as "Secondary Beneficiaries," "all present, future born and legally adopted children of the Beneficiaries named herein or by amendment hereto, by right of representation." The "Secondary Beneficiaries" are also referred to as the "Beneficiaries Sub-share group." (Paragraph 9.2)

Question

Your question is which of these classes identify the "*present*" (in contrast to *future*) beneficiaries for change in ownership purposes, and specifically, what language in the Trust instrument is determinative.

Summary Conclusion

Regarding the first class, all agree that the children of RHM (named Keith and Ann) are *present* beneficiaries. Regarding the second class, since no "Other Beneficiaries" are *named* in the Trust and, apparently, none were *named* by the Settlor in any amendment to the Trust, there are no present "Other

Beneficiaries."[1] Regarding the third class, as we are of the opinion that the word, "*named*" modifies "... *Designated Beneficiaries*," the "Secondary Beneficiaries" are any of the present, future born and legally adopted children of Keith and Ann (the Designated Beneficiaries *named* in the Trust). Apart from the "Sprinkle/Spray Provisions" (Paragraph 6.6 of the Remainder Trust), the children of Keith and Ann would have no present *interests* in the Trust assets, because the Trustees are required to distribute everything to Keith and Ann (Paragraph 9.1). Unfortunately, the "Sprinkle/Spray Provisions" authorize the Trustees to allocate or distribute the present income of the Trust to all of the Trust beneficiaries, including the Secondary beneficiaries, similar to Example 2 under Property Tax Rule 462.160 (b)(1)(A). This results in the children of Keith and Ann "becoming" present beneficiaries and a change in ownership of the Trust property.

Law and Analysis

The taxpayer's representative asserts that there are no present beneficiaries other than the "Designated Beneficiaries," since the *intent* language in the Trust instrument is determinative and reflects that RHM's purpose was to transfer all *present* interests in the property to her children, Keith and Ann, only, and not to their children.[2] You believe to the contrary, that the language follows the pattern set forth in Example 2 of Rule 462.160 (b)(1)(A), empowering the Trustees with broad discretion to grant *present* interests to all classes of Trust beneficiaries, Keith and Ann, as well as RHM's grandchildren. The sole question here in determining change in ownership is, which classes of beneficiaries are *present* beneficiaries included under the terms, "Trust Beneficiaries of the Trust," and "the defined group of Trust Beneficiaries," in Paragraph 6.6. We agree with your view, as hereinafter explained.

In determining the *intention* of a testator or trustor, Probate Code Section 6151 provides that unless a contrary intention is indicated by the language in the will (or trust), a devise of a present or future interest to the testator's designated heirs or next of kin, "or to the persons described by words of similar import," is a devise to those who would be the testator's heirs, "determined as if the trustor were to die intestate at the time when the devise is to take effect in enjoyment." Thus, Probate Code Section 6151 establishes a constructional preference against early vesting, and where the class is indefinite (e.g. to "heirs"), postpones the determination of class membership until the gift takes effect in enjoyment. On the other hand, where the trustor uses words describing a more definite class, such as "children of the beneficiaries named above," the devise is to any member of that group (of children) who is alive at the time of enjoyment. (Probate Code Sections 6146-6147.) In absence of language to the contrary, the "time of enjoyment" is the date of death of the testator or trustor.

Based on the language of the RHM Remainder Trust, there are two types of distributions the Trustees are authorized to make at the time of the trustor's death. First, Paragraph 9.1 authorizes the Trustees to allocate Trust property and assets into "substantially equal subshares" for the benefit of the named Designated Beneficiaries, Keith and Ann."[3] There are no words in these paragraphs indicating that any members of the "Other Beneficiaries" or the "Secondary Beneficiaries" have a present interest in these subshares. Secondly, the language in Paragraph 9.2 expressly states that "The Beneficiaries of this Trust shall also include," anyone named in the class of "Other Beneficiaries" and anyone in the class described as "all present, future born and legally adopted children of the Beneficiaries named herein or by amendment hereto." The Trust has apparently

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[1] In the event that "Other Beneficiaries" had been named in the Trust or in an amendment thereto, that Trust language would have to be construed in order to ascertain whether they received present or future interests.

[2] In order to verify RHM's intent that only Keith and Ann would be present beneficiaries, you stated in a fax transmittal dated 9/10/99, that Keith and Ann have daughters, neither of whom are named in the Trust, and that the daughters will execute affidavits declaring that they have no present interests in the Trust.

[3] Paragraph 9.1 states that upon the death of Ruth, "The Trustee shall, upon receipt of the property or assets conveyed to the Trust as provided herein, allocate said Trust property or assets into substantially equal Sub-shares (unless provided for otherwise herein or by amendment hereto), for the benefit of the following named Beneficiaries: Sub-Share #1 – Keith Sub-Share #2 – Ann."

not been amended to *name* any persons among the "Other Beneficiaries," but Keith and Ann both have children, referred to as "Secondary Beneficiaries." Standing alone however, there is nothing devised or distributed to the "children of the Beneficiaries" under Paragraph 9.2, because the preceding paragraph 9.1 requires distribution of everything to Keith and Ann only. Thus, if the Trust did not contain a sprinkle/spray provision, all of the Trust property would have transferred to Keith and Ann, and no change in ownership would have occurred (assuming the claim and other requirements for the parent/child exclusion in Section 63.1were met).

Unfortunately, Paragraph 6.6 provides a broad power authorizing the Trustee to distribute any of the net Trust *income* to the "Trust Beneficiaries of the Trust" and within "the defined group of Trust Beneficiaries, in such amounts or proportions, [be] equally or unequally allocated or distributed as provided for under the sprinkling or spray provisions of the Internal Revenue Code." In both of these terms, the words "Trust Beneficiaries" mean anyone who has the *present* right to receive the Trust income. Pursuant to Rule 462.160 (b)(1)(A), Example 1, a person who is or becomes entitled to the present trust income is considered to be a present beneficial owner for change in ownership purposes. It seems quite clear that all of "The Beneficiaries" under Article 9, described in Paragraphs 9.1 and 9.2 have a present interest in the Trust income as the "Trust Beneficiaries" in Paragraph 6.6. There is no distinction made in Paragraph 6.6 among the three classes of Trust Beneficiaries; rather, the entire defined group (meaning all classes) is included. Moreover, there are no contingencies which must first occur as a prerequisite to the Trustee's distribution (e.g., only income representing the rest, residue, and remainder of the estate). As long as any person qualifies as a "Trust Beneficiary," the Trustee may distribute to such person all or part of the *present* income. As noted above, the children of Keith and Ann certainly qualify as "children of the Beneficiaries named" in the Trust. (Paragraph 9.2.)

Applying Change in Ownership to Sprinkle/Spray Provision

The effect of the Paragraph 6.6 sprinkle/spray provision is dealt with in Example 2 of Rule 462.160 (b)(l)(A), and results in a change in ownership of all of the Trust property, since the children of Keith and Ann, as *Trust Beneficiaries,* have "present" income interests. With the present right to receive distributions of the Trust income, each living child of Keith and Ann is considered to be an "owner" of the property, since the Trustee can distribute to any or all of them at any time.

As set forth in Rule 462.160 (b)(1)(A) , "...Where a trustee of an irrevocable trust has total discretion ('sprinkle power') to distribute trust *income or property* to a number of potential beneficiaries, the property is subject to change in ownership, because the trustee could potentially distribute it to a non-excludable beneficiary, unless all of the potential beneficiaries have an available exclusion from change in ownership."

Thus, if the language in a trust provides that any member of a class of *present or future beneficiaries* may be omitted, leaving as the sole present beneficiary only the person who had *no* available exclusion from change in ownership, a change in ownership of all of the trust property occurs. Anyone who at the current time can receive a "present interest" in some, or all of the income of an irrevocable trust "becomes" the sole present beneficiary under the sprinkle power; therefore, everyone in that group must have an available exclusion. This is clarified by Example 2 in Rule 462.160 (b)(1)(A).[4]

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[4] Example 2: Example 2: H and W transfer real property interests to the HW Revocable Trust. No change in ownership. HW Trust provides that upon the death of the first spouse the assets of the deceased spouse shall be distributed to "A Trust", and the assets of the surviving spouse shall be distributed to "B Trust", of which surviving spouse is the sole present beneficiary. H dies and under the terms of A Trust, W has a "sprinkle" power for the benefit of herself, her two children and her nephew. When H dies, A Trust becomes irrevocable. There is a change in ownership with respect to the interests

The taxpayer's attorney has argued that, despite the language in Paragraph 6.6, under Paragraph 9.12,[5] the "Secondary Beneficiaries" do not receive present interests; rather, their interests are "future," contingent upon the death of their respective parent, Keith or Ann. However, the language in Paragraph 9.12 indicates no contingencies or conditions which would prevent any of the Secondary Beneficiaries in Paragraph 9.2 from receiving a "present" interest in Trust income. Although the same might be said of the "Other Beneficiaries," the description of that class is such that unless a person is named, no person or entity "is" ascertainable.[6]

The language in Paragraph 9.12 states in relevant part:

> "Should a Designated Beneficiary predecease the Settlor, (or within...[120] days of the death of Settlor) that Beneficiary's Remainder Trust sub-share shall be held, administered and distributed for the benefit of the natural born or legally adopted children of the Beneficiary, by right of representation, (herein referred to as the Designated Beneficiary's Sub-share group), on the same terms and conditions as set forth herein for the Designated Beneficiaries of this Trust. If a child of a Designated Beneficiary dies before receiving his or her final distribution as set forth herein, his or her share shall be allocated in equal shares to any surviving brothers or sisters of that child. ..."

In our view, this language provides that in the event of the death of a Designated Beneficiary, the portion of the Trust property he or she owns at that time will transfer to his or her respective children. Paragraph 9.12 contains no conditions requiring any beneficiary to die first. Nor does the phrase "*by right of representation*" in Paragraph 9.2 create "future" rather than "present" interests in the Secondary Beneficiaries. The Secondary Beneficiaries' interests are vested and present, unless there is a prerequisite that their interests are contingent on being named first. Therefore, if the Secondary Beneficiaries are not required to be "named," they are not remaindermen as to Trust income but have present interests in such income.[7]

We note further, that under Paragraph 9.5 the Trustees are given a special power of appointment to invade the trust principal and income for the benefit of any or all of the Trust Beneficiaries, "...as the Trustee

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transferred to the A Trust because the sprinkle power may be exercised so as to omit the spouse and children as present beneficiaries for whom exclusions from change in ownership may apply, and there are no exclusions applicable to the nephew. However, if the sprinkle power could be exercised only for the benefit of W and her children for whom exclusions are available, the interspousal exclusion and the parent/child exclusion would exclude the interests transferred from change in ownership, provided that all qualifying requirements for those exclusions are met.

[5] Paragraph 9.12 is entitled *Reallocation of Benefits, Death of Designation Beneficiary, (The Beneficiary's Sub-Share Group).*

[6] Probate Court Section 15205 states that a trust is created only if a beneficiary or a class of beneficiaries is ascertainable with reasonable certainty or sufficiently described so it can be determined with reasonable certainty that some person meets the description or is within the class.

[7] The language identifying *"all...future born or legally adopted children of the Designated Beneficiaries, "* authorizes distribution of a "present interest" to a broad class that includes all persons answering the class description whenever that transfer could or does take place. Thus, it constitutes a transfer to all persons answering the class description. Any person born (or legally adopted) upon or after the time of enjoyment takes a present interest if answering the class description and is considered a "present" beneficiary. This would include all future, but as yet, unborn children of Keith and Ann.

shall deem necessary ... for the reasonable maintenance, care, comfort, use, benefit and enjoyment ... of the Beneficiary or the Beneficiary's Sub-share group." Since the "Beneficiary's Sub-share group" is specifically defined in Paragraph 9.2 to means the "Secondary Beneficiaries," and since these are the daughters of Keith and Ann who are not excludable, a change in ownership would result to the extent that the Trustees exercised this special power of appointment. This is not a concern in this instance, however, since we have concluded that a 100% change in ownership resulted based upon the sprinkle/spray provision in Paragraph 6.6, discussed above, and since the daughters declare that they have no present interests in the Trust, indicating no exercise of the appointment to their benefit.

Guidelines For Applying Change in Ownership to Trust Language - Apart from Sprinkle/Spray Provisions

You also requested that we provide some guidelines relevant to an assessor identifying specific language in this Trust or trusts in general, to assist in distinguishing *present* from *future* beneficiaries. As you acknowledged, it is the assessor' s responsibility to apply the relevant statutes to trust provisions in order to determine those entitled to *present beneficial use* of trust property for change in ownership purposes.

The Legislature and the Board confronted this problem following the adoption of Article XIII A, and recognized that in a trust situation, there are three different phases where a change in ownership may occur:

> 1) a change of beneficial ownership of the property upon creation of a trust, 2) a change of beneficial ownership while the property is in the trust, and, 3) a change of beneficial ownership on the termination or distribution out of a trust. These three phases and examples of transfers within each are set forth in Rule 462.160. The statutory provisions interpreted by the rule, reflect the conclusion reached by the Legislature in implementing Proposition 13, (in Assembly Revenue and Taxation Committee, *Property Tax Assessment*, Volume I, October 29, 1979), requiring a change in ownership whenever there is a transfer of the beneficial use of the property, in or out of a trust.[8]

Correct application requires proper construction of the four key terms in Section 61 indicating that *a present beneficial* interest transferred and therefore, a change in ownership occurred: 1) "vesting" ("vest"), 2) "the right to possession," 3) "remainder or reversion," and 4) "termination of a life estate or similar precedent property interest." Section 61 provides that "except as otherwise provided in section 62, a change in ownership as defined in section 60, includes, but is not limited to:

> (g) " Any *vesting of the right to possession or enjoyment of a remainder* or reversionary interest that occurs upon the *termination of a life estate or other precedent property interest,* except as provided in subdivision (d) of Section 62 and in Section 63," and

[8] On page 19 of Volume I, this requirement is explained as follows:
"Beneficial use is necessary to protect custodianships, guardianships, trusteeships, security interests, and other fiduciary relationships from unintended change in ownership treatment. For example, a father buys land for his minor son, taking title as custodian for the son. There IS a change in ownership when the father buys the property; however, when the son reaches majority and gets the property outright there is no change in ownership. This is because the father never had the beneficial use of the property. The son was the real owner from the outset and when he reached majority there was no transfer of the beneficial use."

(h) Any *interests in real property that vest in persons other than the trustor* (or, pursuant to Section 63, his or her spouse) when a revocable trust becomes irrevocable, except as provided in subdivision (d) of Section 62 and in Section 63."

The term "vesting" has a unique meaning in property tax law,[9] in that it refers to a point in time when a person is "vested with," i.e. "owns," a property interest and no further event must occur in order to determine the right of that person to receive it, even if actual possession may occur at a future time. Such is the case with the beneficiaries of an irrevocable trust, who are *"vested"* with present interests even though they are currently children and will not be in possession until the age of 21.[10] Where the language is a present gift, an additional provision *merely postponing possession* does not impose a contingency of survival. (Witkin, *Summary of California Law,* Vol. 12, "Wills and Probate," sec.277.) This principle is fully explained in *Allen v. Stutter County Board of Equalization,* (1983) 139 Cal. App. 3d 887.[11] The specific trust provisions to look for, reflecting the "vesting" requirement (in this Trust, as well as all trust instruments) are *words of certainty,* e.g., "shall distribute," "vests in," "to A and his heirs." And no provisions expressing *words of futurity or contingency* would be included, e.g. "upon A's death," "if my son survives me," "income to A for life, then,. . .". (30 Cal.Jur. 3d sec. 33-36.)

Interests *not vested* are *"contingent,"* because there is a condition which must first occur and complete uncertainty at the present time that a person has a right to receive anything. Therefore, the term *"right to possession or enjoyment"* in Section 61(g), contemplates the actual occurrence of the event that was a future condition or contingency. "Contingent" most often coordinates with the term, *"termination of a life estate or similar precedent property interest," in* order to time a transfer of property within a trust or on its termination. Thus, the end of someone else's right to possess and enjoy the property must occur before a remainderman or future beneficiary receives the *"right to possession or enjoyment of the property,"* as the statute specifies. The specific trust language to look for are *words of futurity,* together with facts demonstrating that the condition was met. For example, "to A for life, then to C and his heirs, but if C dies, then to D," means that D will receive *a present* interest in the property on the date of C's death *only if* C dies before A. Until that condition occurs and until A dies, D has merely a future interest. Once the facts demonstrating that D's right to possession exists, (C's death followed by A's death), then beneficial ownership has transferred and a change in ownership occurs.

The term "remainder or reversion" also coordinates with *"right to possession or enjoyment."* A *remainder* means a distribution of some part or all of the principal of the trust once the occurrence of some event which occasions that distribution has occurred. A *reversion* in the context of trusts has a limited meaning, generally relevant only to "Clifford Trusts" or "12 Year Trustor Reversion Trusts," such as those described in Section 62(d) and Rule 462.160 (b)(l)(B), where the principal reverts back to the trustor after a certain period of time. The trust provisions reflecting a remainder interest are words *granting a remainder.* Occasionally *words of futurity* are used without a clear remainder grant, although the trust may say

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[9] "Vesting" has a different meaning in trust law, and refers to 1) vesting in entitlement or right, and 2) vesting in possession or enjoyment, and all remainder and reversionary interests in trusts must be vested. (Civil Code Sections 696-781.)

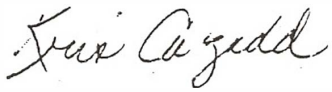
[10] If the Trust says "payable to son when he reaches 21," and son dies before reaching 21, his interests would transfer to his successors, because his interests were vested.

[11] The Court in *Allen, supra,* held that the beneficial present "owners" of property in an irrevocable trust were the four grandchildren who, from the time of the trust's creation, enjoyed equal equitable (beneficial) interests in the income (or accumulation of the income) until they reached the age of 21, at which time they had a right to distribution of their shares.

"Remainder Trust" on the title page. In a trust with a reversion, there is language specifying a time period within which the property reverts back to the trustor. Under the general rule of law, "heirs" includes all those in the class at the time of the settlor's death (or termination of the life estate).[12] Finally, as the statute declares, "termination of a life estate or similar precedent property interest" results in a change in ownership, with limited specific exceptions.

The views expressed in this letter are only advisory in nature. They represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Very truly yours,



Kristine Cazadd
Senior Tax Counsel

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cc:	Mr. Dick Johnson	MIC:63
	Mr. David Gau	MIC:64
	Mr. Charles Knudsen	MIC:62
	Ms. Jennifer Willis	MIC:70

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[12] Witkin, *Summary of California Law,* Vol. 12, "Wills and Probate," sec. 293-295.

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450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
916-323-3097 • FAX 916-323-3387
www.boe.ca.gov

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State Controller

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Executive Director

August 13, 2013

Amy E. Schiff
McDermott Will & Emery LLP
2049 Century Park East, Suite 3800
Los Angeles, CA 90067-3218

Re: Request for Opinion on Reassessment
Assignment No.: 13-012

Dear Ms. Schiff:

This is in response to your letter requesting an advisory opinion concerning whether the transfer of real property to an irrevocable trust constitutes a change in ownership. As explained below, it is our opinion that the transfer will result in a change in ownership.

Factual Background

Husband dies, survived by his wife and three children, but no grandchildren. California commercial real estate is transferred into a trust titled the Exempt Family Trust.[1] As of the date of transfer, there remain three children and no grandchildren. The relevant terms of the Exempt Family Trust provide:

> 1(a) During the survivor's life, the trustee shall pay to any one or more of the survivor and our descendants so much or all of the income and principal in such proportions as from time to time is necessary for their respective support, health and education, giving priority to the survivor. In addition, during the survivor's life, the trustee shall pay to any one or more of the survivor and our descendants so much or all of the income and principal in such proportions as the independent trustee, if any, from time to time decides is advisable for their respective best interests and welfare, giving priority to the survivor. It is our wish, without imposing any legal obligation, that payments to our children and their respective descendants pursuant to the immediately preceding sentence be made equally so that each child (and their respective descendants) receives an equal share of the trust property.

You ask 1) whether the transfer of real estate into the Exempt Family Trust qualifies for the parent-child exclusion and 2) whether reassessment will be triggered as of the date of birth of a grandchild even if the trustee never makes any distributions to such grandchild.

[1] Although your letter does not state, we assume that the trust is irrevocable.

Law & Analysis

Article XIII A, section 2 of the California Constitution requires the reassessment of real property upon a change in ownership. A change in ownership is defined in Revenue and Taxation Code[2] 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."

Proposition 58, approved by the voters on November 4, 1986, added subdivision (h) to section 2 of article XIII A of the California Constitution. Subdivision (h) provides, in part, that the terms "purchased" and "change in ownership" shall not include the purchase or transfer between parents and their children of either a principal residence or the first $1 million of the full cash value of all other real property.

Section 63.1 provides the statutory implementation of Proposition 58. Subdivision (a)(1)(A) of section 63.1 states that a change in ownership shall not include "The purchase or transfer of real property which is the principal residence of an eligible transferor in the case of a purchase or transfer between parents and their children." The term "transfer" is defined in subdivision (c)(9) of section 63.1 as "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."

A trust provision which gives the trustee total discretion to distribute the trust income or property to a number of potential beneficiaries is called a "sprinkle or spray power." When a trust contains a sprinkle or spray provision, all of the persons included as beneficiaries under that provision must have an exclusion in order to avoid a change in ownership and reassessment. If even one person included as a beneficiary is not excludable, then 100 percent of the trust property is subject to change in ownership. (Property Tax Annotation[3] (Annotation) 625.0236 (July 18, 2001); Annotation 220.0821 (July 22, 2002).)

This principle is described in Property Tax Rule[4] (Rule) 462.160, subdivision (b)(1)(A) as follows:

> Where a trustee of an irrevocable trust has total discretion ("sprinkle power") to distribute trust income or property to a number of potential beneficiaries, the property is subject to change in ownership, because the trustee could potentially distribute it to a non-excludable beneficiary, unless all of the potential beneficiaries have an available exclusion from change in ownership.

Thus, a trust which provides that the trustee may exercise a sprinkle power to a group of beneficiaries that includes some persons to whom exclusions are available and some to whom no exclusions are available is treated as though no exclusions were available. This is because the trustee may distribute any or all income to some beneficiaries and omit other beneficiaries. (Annotation 625.0236 (July 18, 2001).)

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[2] All section references are to the Revenue and Taxation Code unless otherwise specified.

[3] Property tax annotations are summaries of the conclusions reached in selected legal rulings of State Board of Equalization counsel published in the State Board of Equalization's Property Tax Law Guide. (See Cal. Code Regs., tit. 18, § 5700 for more information regarding annotations.)

[4] All references to Property Tax Rules are to sections of title 18 of the California Code of Regulations.

According to your letter, the current "descendants" apparently only consist of husband and wife's direct children. However, naming "descendants" as potential beneficiaries grants the trustee power to potentially transfer trust assets to a non-excludable beneficiary since the term "descendants" could include grandchildren that do not qualify for the grandparent-grandchild exclusion. Annotation 220.0821 analyzes a trust provision similar to the one at issue here. In that annotation, a trust provided a trustee power to sprinkle income or principal to any present or future descendants of the trustor. Because the class of potential beneficiaries included beneficiaries not excludable under the parent-child or grandparent-grandchild exclusion, it opined that pursuant to Rule 462.160, subdivision (b)(1)(A), a change in ownership occurred at the time of trustor's death. We also note that Annotation 625.0236 states that if the trust provided that any beneficiary, present or future, could receive trust income or income and principal, a change in ownership of all of the trust property would occur. (Annotation 625.0236 (July 18, 2001) at p. 4.)

In this case, since the group of beneficiaries potentially includes some persons to whom exclusions are available and some to whom no exclusions are available, there is no guarantee that the property will be transferred to excludable beneficiaries. Therefore, pursuant to Rule 462.160, subdivision (b)(1)(A), and Annotations 220.0821 and 625.0236, it will be treated as though no exclusions were available, and the entire portion of the trust property that was transferred into the Exempt Family Trust should be reassessed at the time of transfer into the Exempt Family Trust. Because the reassessment occurs at the time of the transfer, there will be no additional reassessment when any grandchildren are born.

The views expressed in this letter are only advisory in nature. They represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity. Should you have any additional questions, please feel free to contact me.

Sincerely,

Daniel Paul
Tax Counsel III (Supervisor)

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cc: Honorable James B. Rooney
President, California Assessors' Association
Amador County Assessor
810 Court Street
Jackson, CA 95642-2132

Mr. David Gau MIC:63
Mr. Dean Kinnee MIC:64
Mr. Todd Gilman MIC:70