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Fourth District, Los Angeles

GRAY DAVIS
Controller, Sacramento

BURTON W. OLIVER
Executive Director

December 16, 1993

Mr.
Attorney at Law

Dear Mr. :

In accordance with our recent telephone conversation, enclosed are letters from the Board's legal staff dated June 19, 1987 and September 30, 1993 expressing the opinion that the $1 million parent-child exclusion from change in ownership is available with respect to a parent transferor of remainder interests in trust who died prior to the effective date of Proposition 58 where such remainder interests became possessory after the effective date of Proposition 58.

Very truly yours,

Eric F. Eisenlauer

Eric F. Eisenlauer
Staff Counsel III

EFE:ba
Enc.

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GRAY DAVIS
Controller, Sacramento

BURTON W. OLIVER
Executive Director

September 30, 1993

RECEIVED
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Division of Accounting Standards
SACRAMENTO

Re: Request for Opinion Regarding Parent/Child Exclusions for Transfers from the D S Marital Trust and B S Survivor's Trust for County Assessor's Parcel Nos:

Dear Mr. Wachtel:

This is in response to your letter of September 3, 1993 to the attention of Mr. Richard Ochsner in which you request our opinion as to whether two $1,000,000 parent/child exclusions from property tax reassessment are allowable under the following facts contained in your letter and set forth below:

In 1970, the S 's, B and D , created an inter vivos revocable trust (the "S Trust") for their benefit during their joint lives and the life of the survivor of them.

Pursuant to the terms of the S Trust, as amended through the Sixth Amendment dated May 14, 1984, a second trust (the "Marital Trust") was created out of the S Trust as a separate irrevocable trust at the death of Mrs. S who predeceased her husband by her death on January 19, 1986. The balance of the S Trust, after certain specified outright distributions of cash, became the Survivor's Trust, which remained revocable by Mr. S as the surviving trustor. Each of the two Trusts was later funded, as required by the S Trust, with assets constituting half the value of Mr. and Mrs. S 's community property. To facilitate administration of the Marital and Survivor's Trusts, both spouses' community property interests in four parcels of real property, i.e., AP Nos. and (these two AP Nos. represent one property), and (the "Marital Trust Parcels") were

included in the funding of the Marital Trust so that those entire Parcels would be held and administered within a single trust. The family residence and A.P. No. (the "Survivor's Trust Parcel") were included in the assets that funded the Survivor's Trust.

As required by the terms of the S Trust, the Marital Trust was created at Mrs. S 's death as an irrevocable trust for the sole benefit of the surviving spouse, Mr. S , during his lifetime. The Marital Trust named F and E , (the "S Children") to receive contingent remainder interests in the Marital Trust assets after Mr. S 's death, but only if they survived Mr. S . Specifically, the S Trust provided that if both S Children survived Mr. S , or predeceased Mr. S leaving issue who survived him, each S Child, or issue of a predeceased child, would become a life beneficiary of the Marital Trust as to a 3/8 interest in that Trust at Mr. S 's death, and would receive a 1/8 interest in the Marital Trust assets outright six months after Mr. S 's death.

PCORs were filed with respect to the transfer of the Marital Trust Parcels and Survivor's Trust Parcel after Mrs. S 's death to the Marital and Survivor's Trusts. The PCORs claimed exemption from change of ownership classification on the grounds that the transfers were excluded from the definition of change of ownership under the interspousal transfer exclusion of Revenue and Taxation Code[1] Section 63(a) (to the extent of the interests transferred to the Marital Trust by Mrs. S) and the exclusion under section 62(b) for transfers for the benefit of the grantor (to the extent of the interests transferred to the Marital Trust by Mr. S).

The sole income beneficiary of both the Marital Trust and the Survivor's Trust after Mrs. S 's death was her surviving spouse and co-settlor of the Trusts, Mr. S , until his death on October 20, 1989. The Marital trust also provided for distributions of principal to Mr. S subject to an ascertainable standard restricting such distributions to amounts needed for support, maintenance and medical expenses. The Survivor's Trust remained revocable in its entirety until Mr. S 's death.

Neither the S Children nor anyone else held a vested remainder interest in the Marital or the Survivor's Trust until

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[1]All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

Mr. S 's death, as both Trusts required that the S Children survive both of the S 's in order to succeed to the present interest in the Trusts. At the death of B S on October 20, 1989, the terms of the S Trust provided that the Marital Trust be divided into equal shares for the lifetime benefit of the two S Children if they both survived their parents. If either of the S Children were to predecease the surviving parent, leaving issue, the deceased child's estate would take nothing from the Marital or Survivor's Trusts, and the issue of the deceased child, if any, would receive the child's share instead.

If one of the S Children had predeceased Mr. S without leaving issue, that child's estate would have received nothing from the Marital or Survivor's Trusts, and that child's share would have been added to the other child's share. F has no children and therefore neither his estate nor any issue of his would have received anything from the Marital Trust or Survivor's Trust if he had predeceased Mr. S . Because both the S Children did in fact survive Mr. S , each child's remainder interest in their respective fifty percent (50%) shares of the Marital Trust and Survivor's Trust finally vested as a present beneficial interest at their father's death in 1989.

The terms of the S Trust specify that as to each child who receives a present interest in the Trust upon the death of the surviving parent, the child's interest in the Marital Trust will continue to be held in trust for his or her sole benefit during his or her lifetime, except that 1/4 of each child's fifty percent of the Marital Trust (i.e., 1/8 of the entire Marital Trust) must be distributed outright to such child, free of trust. The Smith Trust requires that the remaining portion of each child's respective share (i.e., the remaining 3/8 of the Marital Trust held for that child's benefit) must be transferred to and held thereafter in a separate subtrust to be created for the lifetime benefit of the child as income beneficiary under the Marital Trust. Upon the deaths of the S Children, their respective Marital Subtrusts must be held for the benefit of their issue until the date specified in the Trust for termination.

At B S 's death, the Survivor's Trust become irrevocable and, by its terms, was required to distribute its income and assets, including the Survivor's Trust Parcel (APN), outright in equal shares to the S s' surviving children.

After Mr. S 's death in 1989, your office filed PCORs and parent/child exclusion forms with the County Assessor's office on behalf of the Marital Trust and Survivor's Trust claiming two One Million Dollar ($1,000,000) parent/child exclusions for the transfers of partial present interests in the Marital Trust Parcels and Survivor's Trust Parcel from Mr. S and Mrs. S , respectively, to their son, F , at Mr. S 's death.

The Assessor, relying on Revenue and Taxation Code Section 63.1, subdivision (f) (now subdivision (h)) took the position that no $1,000,000 exclusion was available with respect to Mrs. S 's interest in the Marital Trust parcels because "the transfers from the D S Marital Trust to her surviving children arose on the occurrence of her death, January 19, 1986" which was prior to the effective date of Proposition 58.

You have requested our opinion that (a) no change of ownership of any of the Marital Trust Parcels or the Survivor's Trust Parcel occurred at Mrs. S 's death; (b) the only transfer of a present beneficial interest in the Marital Trust Parcels and Survivor's Trust Parcel from Mr. and Mrs. S that amounted to a change of ownership occurred in 1989 when Mr. S died, rather than at Mrs. S 's death in 1986; and that (c) because those changes of ownership were from Mrs. S and from Mr. S to their children, and the changes of ownership from each parent occurred after the effective date of Proposition 58, a parent/child exclusion should be allowable with respect to each transferor parent for the transfer to F of his interest in the Marital Trust Parcels and Survivor's Trust Parcel.

For the reasons set forth below, we so conclude.

(a) No Change in Ownership of Any of the Marital Trust Parcels or the Survivor's Trust Parcel Occurred at Mrs. S 's Death.

Section 60 defines "change in ownership" to mean "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 "[c]hange in ownership shall not include: ... (d) Any transfer by the trustor, or by the trustor's spouse, or both, into a trust

for so long as (1) the transferor is the present beneficiary of the trust, or (2) the trust is revocable...."

Further, Section 63 excludes from change in ownership "(a) Transfers to a trustee for the beneficial use of a spouse, or the surviving spouse of a deceased transferor...."

At the time of Mrs. S 's death, she owned a community property interest in the real property that became the Marital Trust Parcels and the Survivor's Trust Parcel. Under the terms of each of those Trusts, Mr. S was the sole income beneficiary and as the Survivor's Trust Mr. S also had the right to revoke i.e., virtual ownership of the property in the Survivor's Trust. Thus, under the terms of those Trusts, Mrs. S made a transfer of a present beneficial interest in the Marital Trust Parcels and the Survivor's Trust Parcel to Mr. S to the extent of her community interest therein at the time of her death. Since the transfer was to her surviving spouse, however, the transfer was excluded from change in ownership under section 63(a).

At the same time, Mrs. S made a transfer of a future beneficial interest i.e. a remainder interest in such property to the S Children. See Civil Code Section 769. That transfer, however, was not a change in ownership because it was a transfer of a future rather than a present interest as required by Section 60.

Also, at the time of Mrs. S 's death, Mr. S owned a community property interest in the real property that became the Marital Trust Parcels and the Survivor's Trust Parcel. Accordingly, since Mr. S was the sole present beneficiary of the Marital Trust, the transfers by Mr. S of his community interest in real property to that trust were excluded from change in ownership under section 62(d).

As distinguished from Mrs. S , Mr. S made no transfer of a present beneficial interest in real property because he continued to be the present beneficial owner of such real property as the sole present beneficiary of the Marital Trust and the Survivor's Trust after his transfers to these Trusts.

Like Mrs. S , however, Mr. S did transfer future beneficial interests in the Marital Trust Parcels and the Survivor's Trust Parcel to the S Children contingent upon their survival of Mr. S and as to the Survivor's Trust Parcel contingent also upon the Survivor's Trust not being revoked by Mr. S . As indicated above, however, such transfers were not

a change in ownership because they were transfers of future rather than present interests as required by Section 60.

Moreover, the transfers of future interests by Mr. and Mrs. S to their children at the time of Mrs. S 's death also failed the "value equivalence" requirement of Section 60 in that the value of the income interests rather than the remainder interests transferred to the children was "substantially equal to the value of the fee interest." (Rep. of the Task Force on Property Tax Admin., presented to the Assem. Com. on Rev. & Tax. (1979) p. 43.) Thus, no change in ownership would occur until the property passes to the remaindermen on the death of the income beneficiary. (Ibid.)

For the foregoing reasons, no change in ownership of any of the Marital Trust Parcels or the Survivor's Trust Parcel occurred at Mrs. S 's death.

(b) Transfers of Present Beneficial Interests in the Marital Trust Parcels and Survivor's Trust Parcel From Mr. and Mrs. S Constituted Changes in Ownership in 1989 When Mr. S Died.

Section 61 contains a list of specific statutory examples of transactions which constitute a change in ownership as defined in section 60 including, subject to exceptions not here relevant: "(f) Any vesting of the right to possession or enjoyment of a remainder...interest which occurs upon the termination of a life estate or other similar precedent property interest....[¶] (g) Any interests in real property which vest in persons other than the trustor (or pursuant to Section 63, his or her spouse) when a revocable trust becomes irrevocable."

As indicated above, a community property half interest in the Marital Trust Parcels was transferred by Mrs. S into the Marital Trust at her death and a community property half interest in the Marital Trust Parcels was transferred by Mr. S into the Marital Trust at that time.

When Mr. S died in 1989, there was a "termination of a life estate or other similar precedent property interest" in the Marital Trust. At that time, the rights of the S Children to possession or enjoyment of their remainder interests in the Marital Trust Parcels vested in that each child became entitled to an outright distribution of 1/8 of the Marital Trust with 3/8 held thereafter in a separate subtrust for the lifetime benefit of each child as income beneficiary. Accordingly, there was a change in ownership i.e., a transfer of the present beneficial interest of the Marital Trust Parcels of which Mr. and Mrs. S

were the owners and transferors at that time under section 61(f).

Further, when Mr. S died in 1989, the Survivor's Trust which was revocable by Mr. S until that time, became irrevocable. Under the terms of the Survivor's Trust, all interests in the Survivor's Trust Parcel became distributable outright to the S Children in equal shares, i.e., "vested in" them at that time. Accordingly, there was a change in ownership of the Survivor's Trust Parcel in October 1989 when Mr. S died under Section 61(g).

Since Mr. S , for all practical purposes, owned the Survivor's Trust Parcel because of his power to revoke the Survivor's Trust, we are of the view that only Mr. S was the transferor of the Survivor's Trust Parcel.

(c) A Parent/Child Exclusion is Allowable With Respect to Each Transferor Parent for the Transfer to F of His Interest in the Marital Trust Parcels and Survivor's Trust Parcel.

Proposition 58 was adopted by the California electorate in November 1986, and added subdivisions (g) (h) and (i) to Section 2 of Article XIIIA of the California Constitution. Subdivision (h) provides in relevant part that "the terms 'purchased' and 'change of ownership' shall not include the purchase or transfer of the principal residence of the transferor in the case of a purchase or transfer between parents and their children and the purchase or transfer of the first $1,000,000 of the full cash value of all other real property between parents and their children...."

Subdivision (i) provides that Proposition 58 is "effective for changes of ownership which occur...after the effective date of [Proposition 58]." Section 63.1 is the implementing legislation for subdivision (h) and provides:

"(a) Notwithstanding any other provision of this chapter, a change in ownership shall not include either of the following purchases or transfers for which a claim is filed pursuant to this section:

"(1)....

"(2) The purchase or transfer of the first one million dollars ($1,000,000) of full cash value of all other real

"(2) For purposes of paragraph (2) of subdivision (a), the one million dollar $1,000,000) exclusion shall apply separately to each eligible transferor with respect to all purchases by and transfers to eligible transferees on and after November 6, 1986, of real property, other than the principal residence, of that eligible transferor.

"(c) As used in this section:

"(1) 'Purchase or transfer between parents and their children' means either a transfer from a parent or parents to a child or children of the parent or parents or a transfer from a child or children to a parent or parents of the child or children.

"...

"(4) 'Eligible transferor' means a parent or child of an eligible transferee.

"(5) 'Eligible transferee' means a parent or child of an eligible transferor.

"...

"(h) This section shall apply to purchases and transfers of real property completed on or after November 6, 1986, and shall not be effective for any change in ownership, including a change in ownership arising on the date of a decedent's death, which occurred prior to that date."

In this case the transfers from Mr. and Mrs. S to their children were not completed, because of their contingent nature, until Mr. S 's death in 1989. Had the S Children not survived Mr. S , the transfers to them by their parents never would have been completed and there would have been no parent/child transfer. As indicated above, no change in ownership occurred or arose on Mrs. S 's death or at any subsequent time until Mr. S died. Since the property which changed ownership on Mr. S 's death was transferred by Mr. and Mrs. S from their community property and since that change in ownership occurred after the effective date of Proposition 58, they are <u>both</u> eligible transferors as explained above for purposes of the $1 million per transferor exclusion notwithstanding the fact that Mrs. S died before November 6, 1986.

That position is one that we have consistently taken since the adoption of Proposition 58 as indicated by our letter to

Honorable Emil G. Shubat of June 19, 1987 a copy of which is enclosed. We believe the conclusions and the analysis in that letter are equally applicable in this case.

Based on all of the foregoing, therefore, we are of the opinion that Mr. S was an eligible transferor as to the entire Survivor's Trust Parcel and an undivided one-half interest in the Marital Trust Parcels and that Mrs. S was an eligible transferor as to an undivided one-half interest in the Marital Trust Parcels for purposes of Proposition 58 and Section 63.1.

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.

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

Very truly yours,

Eric F. Eisenlauer

Eric F. Eisenlauer
Staff Counsel III

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Enc.
precednt\parchild\93009

cc: Mr. John Hagerty w/o enc. - MIC:63
Mr. Verne Walton w/o enc. - MIC:64

STATE OF CALIFORNIA

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KENNETH CORY
Controller, Sacramento

DOUGLAS D. BELL
Executive Secretary

June 19, 1987

Honorable Emil G. Shubat
Assessor of Sutter County
Office of the Assessor
P.O. Box 1555
Yuba City, CA 95992

Dear Mr. Shubat:

Your letter to Mr. James J. Delaney dated May 28, 1987 and the attached letter from dated May 22, 1987 have been referred to me for reply. Ms. requests an opinion as to whether certain transfers to and from a testamentary trust would be changes in ownership and further asks what effect Proposition 58 would have on such transfers when the trustor and beneficiaries are parents and children. The facts as related in Ms. 's letter are as follows:

> "The proposed transfers are transfers into and out of a testamentary trust created in 1984 upon the death of John Doe. Mr. Doe's will left his share of the community real property to a testamentary trust. Mrs. Doe owns the other half of the real property outright. Since the property is difficult to administer with title held half by Mrs. Doe as an individual and half by the trust, we are contemplating transferring Mrs. Doe's share of some of the property into the trust and the trust's share of other properties out of the trust.
>
> "The applicable paragraph of the trust concerning the beneficiaries reads as follows:
>
> "'If my wife survives me, the trustee shall pay to her or apply for her benefit during her lifetime, quarter annually or at more frequent intervals, the entire net income of the trust.
>
> "'If the trustee shall deem such income payment to be insufficient, the trustee shall, from time to time, pay to my wife or apply for the benefit of my wife such sums out of principal that the trustees in the trustees' discretion shall deem necessary for her proper support, care, and maintenance. The trustees

> may also, in the trustees' absolute discretion, pay to or apply for the benefit of any one or more of my children such sums out of the principal as the trustee may deem necessary for their support, care, maintenance, and education.'"

Question 1:

Would a transfer of real property to the trust by Mrs. Doe constitute a change in ownership?

Response:

Revenue and Taxation Code* section 62 states in pertinent part that:

> Change of ownership shall not include:
>
> (d) Any transfer by the trustor or 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 (2) The trust is revocable; or any transfer by a trustee of such a trust described in either clause (1) or (2) back to the trustor; . . .

Section 462(i)(2) of Title 18 of the California Administrative Code (Property Tax Rule 462(i)(2)), which interprets section 62(d), further states in relevant part that:

> A transfer to a trust is not a change in ownership upon the creation or transfer to a trust if:
>
> (A) Trustor-transferor beneficiary trusts. The trustor-transferor is the sole present beneficiary of the trust; provided, however, a change in ownership of trust property does occur to the extent that persons other than the trustor-transferor are present beneficiaries of the trust.

Based on the foregoing provisions, Mrs. Doe's transfer of real property to the trust would not constitute a change in ownership if she is the sole present beneficiary of the trust. Under the terms of the trust, Mrs. Doe is the sole income beneficiary. In addition, the trust provides that if the income payment is insufficient, the trustee shall pay to Mrs. Doe or apply for her benefit such sums out of the principal that the trustees in their discretion deem necessary for her

*All statutory references are to the Revenue and Taxation Code

proper support, care and maintenance. The trust also provides, however, that the trustees may, in their absolute discretion, pay to or apply for the benefit of any one or more of the trustor's children such sums out of the principal as the trustees may deem necessary for their support, care, maintenance, and education.

Under provisions such as the latter regarding the trustor's children, the interest of the beneficiary is at most a mere expectancy. (Estate of Canfield (1947) 80 Cal.App.2d 443, 451; Estate of Johnson (1961) 198 Cal.App.2d 503, 510.) Similarly, the interest created by such a provision has been characterized as a future interest for federal gift tax purposes since the discretion of the trustees is a barrier to the children's present enjoyment of the trust principal. Jacobson v. U.S. (1978) 42 AFTR 2d 78-6499. It is therefore our opinion that Mrs. Doe is the sole present beneficiary of the trust and that her transfer of real property to the trust accordingly would not be a change in ownership.

Question 2:

Would a transfer of real property from the trust to Mrs. Doe constitute a change in ownership?

Response:

Section 63 provides in relevant part that:

> Notwithstanding any other provision in this chapter, a change in ownership shall not include any interspousal transfer, including but not limited to: (a) [t]ransfers to a trustee for the beneficial use of a spouse, or the surviving spouse of a deceased transferor, or by a trustee of such a trust to the spouse of the trustor. (Emphasis added.)

Since the proposed transfer from the trust to Mrs. Doe is expressly excluded by the language of section 63, such transfer would not constitute a change in ownership.

Question 3: Would transfers of real property from the trust to the children be excluded from change in ownership under Proposition 58 as transfers between a parent or parents and children?

Response: Proposition 58 was adopted by California voters in the November 1986 election and added subdivisions (g), (h) and (i) to section 2 of article XIII A of the California Constitution. Subdivision (g) essentially restates the

provisions of section 63 relating to interspousal transfers. Subdivision (h) provides in pertinent part that

> [f]or purposes of subdivision (a), the terms "purchased" and "change of ownership" shall not include the purchase or transfer of the principal residence of the transferor in the case of a purchase or transfer between parents and their children . . . and the purchase or transfer of the first $1,000,000 of the full cash value of all other real property between parents and their children. . . .

Subdivision (i) provides that unless otherwise provided the amendments to section 2 apply to change of ownerships occurring after the effective date of the amendment (i.e., on or after November 6, 1986).

The implementing legislation for Proposition 58 is AB 47 which adds section 63.1 to the Revenue and Taxation Code. Section 63.1 reiterates the exclusion of Proposition 58 for transfers between parents and children but makes no reference to transfers to and from trusts. Section 2 of AB 47, however, provides in relevant part:

> SEC. 2. It is the intent of the Legislature that the provisions of Section 63.1 of the Revenue and Taxation Code shall be liberally construed in order to carry out the intent of Proposition 58 on the November 4, 1986, general election ballot to exclude from change in ownership purchases or transfers between parents and their children described therein. Specifically, transfers of real property from a corporation, partnership, trust, or other legal entity to an eligible transferor or transferors, where the latter are the sole owner or owners of the entity or are the sole beneficial owner or owners of the property, shall be fully recognized and shall not be ignored or given less than full recognition under a substance-over-form or step-transaction doctrine, where the sole purpose of the transfer is to permit an immediate retransfer from an eligible transferor or transferors to an eligible transferee or transferees which qualifies for the exclusion from change in ownership provided by Section 63.1. . . .

We recognize that from the second sentence of section 2 quoted above it is possible to argue that transfers in trust are not intended to be excluded from change in ownership under Proposition 58 and that real property must be transferred out of trust and retransferred directly to an eligible transferee in order to qualify for the exclusion.

Such a conclusion is inappropriate in our view, however, because it is inconsistent with the first sentence of section 2 which evidences the intent of the Legislature to liberally construe the provisions of section 63.1 to carry out the intent of Proposition 58. By its express terms, the intent of Proposition 58 is to exclude the described transfers between parents and their children from change in ownership. It is common knowledge that the persons best able to take full advantage of Proposition 58 use trusts extensively to effect transfers of real property to their children both during their lifetime and particularly at death. To conclude that such transfers are not transfers between parents and children would clearly frustrate the intent of Proposition 58. Moreover, it is our opinion, as indicated below, that such transfers are properly characterized legally as transfers between parents and children.

For purposes of determining whether a transfer of real property from the trust to the children is excluded from change in ownership under Proposition 58 as a transfer between parents and children, it is helpful to remember that a change in ownership requires the "transfer of a present interest in real property, including the beneficial use thereof" rather than a transfer of bare legal title. Section 60, Parkmerced Co. v. San Francisco (1983) 149 Cal.App.3d 1091. When Mr. Doe died in 1984, the beneficiaries of the trust created by his will became the equitable or beneficial owners of the trust property and the legal title to the trust property vested in the trustees at that time. (Estate of Feuereisen (1971) 17 Cal.App.3d 717, 720; Allen v. Sutter County Board of Equalization (1983) 139 Cal.App.3d 887, 890.) At the time of Mr. Doe's death, therefore, the beneficial interest in the real property passed from him to his wife as income beneficiary for life and to his children as equitable remaindermen. The transfer of the beneficial interest in real property was accordingly from a parent to his spouse and his children and not from an individual to an entity.

Similarly, the transfer from the trust to the children at the termination of the trust would not be a transfer of a beneficial interest in the real property from an entity to individuals because the trustees own only the legal and not the beneficial interest in the real property. The beneficial interest in the property was transferred only by Mr. Doe to his children. No other person or entity had beneficial ownership of the property transferred. It is therefore clear that the transfers into the trust by Mr. Doe and out of the trust to his children are transfers between a parent and his children. The same is true with respect to any real property transferred to the trust by Mrs. Doe.

With respect to the real property transferred to the trust by Mr. Doe at his death in 1984 and to be distributed from the trust to his children in the future, there is the further question as to the date of Mr. Doe's transfer to his children for purposes of Proposition 58.

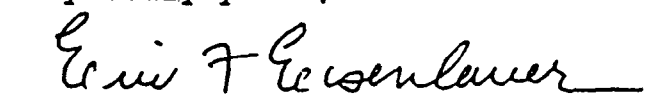
As indicated above, subdivision (i) which Proposition 58 added to section 2 of article XIII A provides that Proposition 58 is "effective for change of ownerships which occur . . . after the effective date of the amendment." Section 63.1(f) provides that "[t]his section shall apply to purchases and transfers of real property completed on or after November 6, 1986."

Transfers which are not changes in ownership are not affected by Proposition 58 and section 63.1. It would obviously make no sense, therefore, to construe the word "transfer" to include transfers which are not changes in ownership. Further, the word "transfer" is used with the word "purchase" in Proposition 58 and section 63.1 and "purchase" is defined by section 67 as "a change in ownership for consideration." It is therefore our opinion that the word "transfer" as used in Proposition 58 and section 63.1 means a change in ownership without consideration.

When John Doe died in 1984, he transferred equitable remainder interests to his children. Such transfers, however, were not changes in ownership under section 60 because they were not present interests in real property and the interests transferred were not substantially equal to the value of the fee interests. A change in ownership will occur, however, under section 61(f) when the children's equitable remainders become possessory upon the termination of Mrs. Doe's life estate. Since such change in ownership or transfer will occur after November 6, 1986, Proposition 58 and section 63.1 will be applicable to exclude such transfer from change in ownership.

We hope the foregoing discussion has been responsive to your inquiry. If you have further questions regarding this matter, please let us know.

Very truly yours,



Eric F. Eisenlauer
Tax Counsel

EFE:cb
cc: Hon. Patricia A. Bluett, Assessor of Yuba County
Hon. Roger G. F. Fong, Assessor of Sacramento County
Ms.