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November 7, 2013

**Re: Real Property Interests Transfers From Irrevocable Trust
 Assignment No.: 13-141**

Dear Mr. _____ :

This is in response to your letter requesting an opinion regarding the change in ownership consequences of transferring real property from an irrevocable trust into a limited liability company and subsequent transfers of membership interests in the limited liability company. As explained below, it is our opinion that no change in ownership results from a transfer of real property from an irrevocable trust into a legal entity wholly owned by the trust. The change in ownership consequences of subsequent transfers of LLC interests depend on the percentage interest of the legal entity transferred.

Factual Background

According to your letter, the _____ Trust B, an irrevocable trust created August 3, 1991 under agreement dated August 22, 1984 (Trust B) owns whole or undivided 4/9ths interests in 23 real properties in _____ County, California (Properties). C

(Chris), the current trustee of Trust B, wishes to create a California limited liability company (LLC) and transfer all of Trust B's interests in the Properties to the LLC. The beneficiaries of Trust B are Chris, as to a 1/3 interest; T _____, Jr. (Tom), as to a 1/3 interest; P _____ (Patrick), as to a 1/6 interest; and Jane _____ (Jane), as to a 1/6 interest. Upon each beneficiary's death, his or her interest in Trust B will be distributed to his or her issue by right of representation, and further held in trust in accordance with the provisions of Trust B. When the second of Chris or Tom dies, Trust B and all continuing trusts thereunder will terminate and distribution will be made outright.

Law and 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 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."

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

Because trusts are not considered separate entities for change in ownership purposes (see *Allen v. Sutter County Bd. of Equalization* (1983) 139 Cal.App.3d 887), the present beneficial ownership interest in the trust corpus is determined by disregarding the trustee's legal title, or "looking through the trust." For property tax purposes, the beneficial owners of trust property in an irrevocable trust are the present beneficiaries of the trust. (Rev. & Tax. Code, § 62, subd. (d); Property Tax Rule² (Rule) 462.160, subd. (b)(1).) In this case, then, as the beneficiaries of Trust B, Chris and Tom are each considered to be present beneficial owners of a 1/3 interest in the Properties, and Patrick and Jane each own a 1/6 interest in the Properties.

In general, the transfer of interests in real property between any legal entity and any person is a change in ownership. (Rev. & Tax. Code, § 61, subd. (j); Rule 462.160, subd. (b).) However, section 62, subdivision (a)(2) provides that change in ownership does not include:

Any transfer between an individual or individuals and a legal entity or between legal entities, such as a cotenancy to a partnership, a partnership to a corporation, or a trust to a cotenancy, that results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees, whether represented by stock, partnership interest, or otherwise, in each and every piece of real property transferred, remain the same after the transfer.

If a transfer of property to a legal entity is excluded from change in ownership pursuant to the above provision, the persons holding ownership interests in that legal entity become "original co-owners" in the legal entity. Thereafter, whenever cumulatively more than 50 percent of the ownership interests are transferred by any of the original co-owners in one or more transactions, the real property that was previously excluded from reassessment under section 62, subdivision (a)(2) undergoes a change in ownership. (Rev. & Tax. Code, § 64, subd. (d).)

As for transfers of legal entity interests, section 64, subdivision (a) provides that the transfer of legal entity interests is generally not considered a transfer of the legal entity's real property, and thus does not constitute a change in ownership. However, section 64, subdivision (c)(1) provides that:

When a corporation, partnership, limited liability company, other legal entity, or any other person obtains control through direct or indirect ownership or control of more than 50 percent of the voting stock of any corporation, or obtains a majority ownership interest in any partnership, limited liability company, or other legal entity through the purchase or transfer of corporate stock, partnership, or limited liability company interest, or ownership interests in other legal entities . . . the purchase or transfer of that stock or other interest shall be a change of ownership of the real property owned by the corporation, partnership, limited liability company, or other legal entity in which the controlling interest is obtained.

In this case, Chris is considering a transfer of the Properties from Trust B to an LLC. Although a transfer of real property between any person and a legal entity typically results in a change in ownership, the property in this case will be transferred from the beneficiaries of Trust B, who are the present beneficial owners of the property in Trust B, to an LLC whose sole member will be the same trust, Trust B. Therefore, the proportional ownership interests of the

² All references to Property Tax Rule or Rules are to sections of title 18 of the California Code of Regulations.

transferors and transferees in each and every piece of real property transferred will remain the same after the transfer as they were before the transfer. Therefore, the proposed transfer to the LLC from Trust B would be excluded from change in ownership under section 62, subdivision (a)(2).

However, once the Properties are transferred to the LLC and excluded from change in ownership pursuant to section 62 subdivision (a)(2), the Trust beneficiaries will become the "original co-owners" of the LLC pursuant to section 64, subdivision (d). Thereafter, all transfers of LLC interests must be counted and cumulated. When more than 50 percent original co-owner shares are transferred, the Properties will undergo a change in ownership. Therefore, when the Trust terminates at the death of Chris or Tom, whichever occurs later, the Properties will undergo a change in ownership and 100 percent reassessment because, at that time, more than 50 percent of the LLC interests will be transferred by the original co-owner beneficiaries to the issue of the beneficiaries. Because transfers between parents and children are not excepted from cumulating to determine a change in ownership under section 64, subdivision (d), and the parent-child exclusion does not apply to transfers of legal entity interests,³ transfers from the current beneficiaries to their issue would count towards the 50 percent original co-owner interest transfer limitation. As you discuss in your letter, another potential scenario that may result in change in ownership occurs if Jane, Patrick, and either of Chris or Tom die. In that case, also, more than 50 percent of the LLC interests will be transferred to their issue, also resulting in a change in ownership. Additionally, a transfer of more than 50 percent of original co-owner shares in the LLC while the beneficiaries are living would also result in a change in ownership under section 64, subdivision (d). If such a transfer results in one person or entity gaining direct or indirect control of the LLC, the LLC would undergo a change in control resulting in a reassessment of the Properties and any other property the LLC owns at that time. (See Rule 462.180, subd. (d)(2).)

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.

Sincerely,

/s/ Leslie Ang

Leslie Ang
Tax Counsel

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cc: Honorable
County Assessor

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

³ See Rule 462.180, subd. (d)(2) and Rev. & Tax. Code, § 63.1, subd. (c)(8).