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STATE OF CALIFORNIA

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January 10, 1996

Re: Request for Opinion Whether Transfer of Real Property from Parent to Child through Medium of an Irrevocable Trust Would Constitute a "Change in Ownership" for California Property Tax Purposes

Dear Ms.

This is in response to your letter of October 30, 1995 in which you request an opinion whether a transfer of real property from parent to child through the medium of an irrevocable trust is a "change in ownership" for California property tax purposes.

The details of the proposed transaction, including a hypothetical illustration of the several possible transfers which may occur and the relevant terms of the irrevocable trust described in your letter are set forth below:

**FACTUAL BACKGROUND OF TRANSACTION**

Phase One.

Parent establishes an inter vivos, irrevocable trust (Trust) and transfers his vacation residence to the Trust (Phase One). Pursuant to the terms of the Trust, parent retains the present beneficial enjoyment of the vacation residence for a period of ten (10) years. Parent is the trustor of the Trust. Other than an interest in the parent's principal residence, parent previously has never transferred any interest in real property to any one of his children.

Phase Two.

At the end of the ten (10) year Trust term, the Trust would terminate, and the trustee of the Trust would transfer title to

the vacation residence outright to parent's child (child was born of the parent), as his sole and separate property (Phase Two); provided, however, child is then the age of twenty-one (21) years or older.

Phase Three.

If at the end of the ten (10) year Trust term, child is under the age of twenty-one (21) years, then the Trust would terminate and the vacation residence would be transferred to a successor irrevocable trust (successor trust), the terms of which are set forth in the original Trust instrument, for the sole benefit of child until child reaches the age of twenty-one (21) years, at which time the successor trust would terminate and the vacation residence would be transferred to child outright as his sole and separate property (Phase Three).

Phase Four.

If parent dies prior to the expiration of the ten (10) year Trust term, then the Trust would terminate and the vacation residence would be transferred back to parent's estate (phase Four) to be distributed as provided by parent's will (or other testamentary document).

Phase Five.

At any time prior to the expiration of the ten (10) year Trust term, the trustee may sell the vacation residence to child at its current fair market value (Phase Five), and the proceeds of such a sale would be retained in the Trust until either: (i) the ten (10) year Trust term expires, at which time the sale proceeds are distributed either outright to child if child is twenty-one (21) years or older, or in trust for the sole benefit of child until the child reaches the age of twenty-one (21), at which time the proceeds are distributed outright to child; or (ii) parent dies, at which time the Trust terminates, the sale proceeds are distributed to parent's estate to be distributed pursuant to parent's will (or other testamentary document).

For the reasons discussed below, none of the foregoing proposed transfers up to the first one million dollars (\$1,000,000) of full cash value transferred will constitute a change in ownership, in our opinion, provided child files a timely claim as

required by Revenue and Taxation Code<sup>1</sup> section 63.1 with the assessor.

#### DISCUSSION

#### Phase One - Pursuant to Section 62, subdivision (d), Transfer by Parent to Trust Would Not Constitute a Change in Ownership Triggering Re-assessment.

Section 60 defines a "change in ownership" 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, subdivision (d) provides, in pertinent part:

"Change in ownership shall not include:

"(d) Any 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 the (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..."

In the Phase One transfer, parent, as trustor, transfers to the Trust his vacation residence, retaining the sole present beneficial enjoyment of the Trust throughout the entire ten (10) year term of the Trust. The Phase One transfer fits squarely within the section 62, subdivision (d) exclusion from "change in ownership". Therefore, the Phase One transfer would not constitute a change in ownership for California property tax purposes.

#### Phase Two.

#### Transfer Outright to Child Upon Termination of Trust Would Not Constitute a Change in Ownership (up to the First One Million Dollars)

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<sup>1</sup>All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

(\$1,000,000) of Full Cash Value Transferred) If  
Child Files a Timely Section 63.1 Claim.

In Phase Two, at the expiration of the ten (10) year Trust term, the Trust would terminate and the vacation residence, including the beneficial use thereof, would be transferred to child as his separate property; provided, however, child is then age twenty-one (21) years or older. As discussed below, the Phase Two transfer would constitute a change in ownership unless child files a timely section 63.1 claim. If child files a timely section 63.1 claim, then such a Phase Two transfer (up to the first one million dollars (\$1,000,000) of full cash value transferred) would not constitute a change in ownership for California property tax purposes.

Subject to the Provisions of Section 63.1,  
Pursuant to Section 61, subdivision(f),  
Transfer to Child Upon Termination of Trust  
Would Constitute a Change of Ownership.

Section 61, subdivision (f) provides, in pertinent part:

"Except as otherwise provided in Section 62, a change in ownership as defined in Section 60, includes, but is not limited to:

"(f) Any vesting of the right to possession or enjoyment of a remainder or reversionary interest which occurs upon the termination of a life estate or other similar precedent property interest, except as provided in subdivision (d) of section 62 and in section 63." (Section 62, discussed in part above, is not applicable and section 63 pertains to interspousal transfers.)

In the Phase Two transfer, pursuant to the terms of the Trust, the Trust would terminate after a period of ten (10) years, and child would receive the remainder interest in the vacation residence which includes the present right to beneficial enjoyment of the vacation residence. Therefore, the Phase Two transfer constitutes a change in ownership as described in section 61, subdivision (f).

Pursuant to Section 63.1, Transfer to Child  
Upon Termination of Trust Would Not Constitute  
a Change in Ownership (up to the First One  
Million Dollars (\$1,000,000) of Full Cash Value  
Transferred) If Child Files a Timely Section  
63.1 Claim.

Section 63.1, subdivision (a) provides, in pertinent part:

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

"\* \* \*

"(2) The purchase or transfer of the first one million dollars (\$1,000,000) of full cash value of all other real property of an eligible transferor in the case of a purchase or transfer between parents and their children."

Pursuant to section 63.1, subdivision (c)(2), the term "children" includes any child born of the parent. Pursuant to section 63.1, subdivision (c)(7), the term "transfer" includes "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". Pursuant to sections 63.1, subdivision (c)(4) and (5), the term "eligible transferor" means a parent or child of an eligible transferee, and the term "eligible transferee" means a parent or child of an eligible transferor.

In the Phase Two transfer, parent is an eligible transferor and child is an eligible transferee (child is born of parent). Child, pursuant to the terms of the Trust, receives the present beneficial interest in the he vacation residence upon termination of the Trust (i.e., child receives the vacation residence "through the medium of an inter vivos trust"). Therefore, the Phase Two transfer falls squarely with the section 63.1, subdivision (a)(2) exclusion from "change in ownership" with respect to the first one million dollars (\$1,000,000) of full cash value of the vacation home. Since parent previously has not transferred any interest in real property (other than an interest in the parent's principal residence) to any of his children (i.e., the full one million dollar exemption is intact), so long

as child files a timely claim with the assessor pursuant to the procedures set forth in section 63.1, the Phase Two transfer (up to the first one million dollars (\$1,000,000) of full cash value transferred) would not constitute a change in ownership for California property tax purposes.

**Phase Three:**

**A Phase Three Transfer to Successor Trust  
for Benefit of Child Would Not Constitute a  
Change in Ownership (up to the First One  
Million Dollars (\$1,000,000) of Full Cash  
Value Transferred) If Child Files a Timely  
Section 63.1 Claim.**

In Phase Three, if at the end of the ten (10) year Trust term, child is then under the age of twenty-one (21) years, then the Trust would terminate, and the vacation residence would be distributed to the successor trust for the sole benefit of child until he attains the age of twenty-one (21) years, at which time the successor trust would terminate and the vacation residence would be distributed outright to child as his sole and separate property. For the reasons discussed above with respect to the Phase Two transfer, such a Phase Three transfer would constitute a change in ownership for California property tax purposes unless child files a timely section 63.1 claim. So long as child files a timely section 63.1 claim, then such a Phase Three transfer would not constitute a change in ownership (up to the first one million dollars (\$1,000,000) of full cash value transferred).

When child attains the age of twenty-one (21) years, the transfer of the vacation residence to child outright by the trustee of the successor trust would not constitute a change in ownership. As indicated above, a change in ownership, as defined by section 60, requires a "transfer of a present interest in real property including the beneficial use thereof...." The transfer of the vacation residence to the child outright by the trustee of the successor trust would not constitute such a transfer and thus would not constitute a change in ownership because the trustee would hold and could transfer only the legal title to the property and child would be the beneficial owner of the property both before and after the transfer. *Allen v. Sutter County Board of Equalization* (1983) 139 Cal.App.2d 887, 890. See also *Parkmerced Co. v. San Francisco* (1983) 149 Cal.App.3d 1091, 1094; Property Tax Rule 462.160 (d)(5).

**Phase Four:**

Pursuant to Section 60, Transfer from Trust  
to Parent's Estate Would Not Constitute a  
Change in Ownership

In Phase Four, if parent dies before the end of the ten (10) year trust term, the Trust terminates and the vacation residence is transferred back to parent's estate to be distributed pursuant to the provisions of parent's will (or other testamentary document).

Before parent's death, the Trust beneficiaries held beneficial title or ownership of the vacation residence and the trustee held only the legal title to such property. *Allen v. Sutter County Board of Equalization*, supra, 139 Cal.App.3d 887, 890. On husband's death, present beneficial ownership of the vacation residence would pass to parent's heirs or devisees subject to administration. (Probate Code §7000, 7001.) Unless an exclusion applies to parent's transfer at death, a change in ownership would occur at the time of parent's death. (§60, Property Tax Rule 462.260 (c).) Since the trustee holds only legal title to the vacation residence, however, a Phase Four transfer to the parent's estate would not constitute a change in ownership for California property tax purposes (§60, 62, subdivision (b), *Parkmerced Co. v. San Francisco* (1983) supra, 149 Cal.App.3d 1091, 1094; Property Tax Rule 462.240 (a)).

**Phase Five:**

Transfer from Trust to Child upon Sale Would  
Not Constitute a Change of Ownership (up to  
the First One Million Dollars (\$1,000,000) of  
Full Cash Value Transferred) If Child Files a  
Timely Section 63.1 Claim.

In Phase Five, the trustee may sell the vacation residence at its fair market value to child at any time during the ten (10) year Trust term. As discussed below, in the event the trustee sells the vacation residence to child, such a Phase Five transfer of the vacation residence to the child would not constitute a change in ownership for California property tax purposes (up to the first one million dollars (\$1,000,000) of full cash value transferred), if child files a timely section 63.1 claim with the assessor.

Subject to the Provisions of Section 63.1,  
Pursuant to Section 60, Transfer from Trust  
to Child Upon Sale Shall Constitute a Change  
in Ownership.

As stated above, section 60 defines a "change in ownership" as a "transfer of a present interest in real property, including the beneficial interest use thereof, the value of which is substantially equal to the value of the fee interest." In a Phase Five transfer, child purchases from the Trust a one hundred percent (100%) interest in the vacation residence (in fee simple). Therefore, a Phase Five transfer would constitute a change in ownership for California real property tax purposes.

Pursuant to Section 63.1, Transfer from Trust  
to Child Upon Sale Shall Not Constitute a  
Change in Ownership (up to the First One  
Million Dollars (\$1,000,000) of Full Cash  
Value Transferred) If Child Files a Timely  
Section 63.1 Claim.

As stated above, section 63.1, subdivision (c)(7) excludes as a change in ownership "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." Parent is an eligible transferor, and child is an eligible transferee (see discussion under Phase Two). Child is purchasing the vacation residence directly from the Trust under which parent had retained the sole present beneficial interest in the vacation residence. By child purchasing the vacation residence from the Trust, parent's present interest in the vacation residence is terminated, and it is transferred by the sale to child. Therefore, such a Phase Five transfer would fall squarely with the section 63.1 exclusion from change in ownership. So long as child files a timely claim with the assessor pursuant to the procedures set forth in section 63.1, such a Phase Five transfer (up to the first one million dollars (\$1,000,000) of full cash value transferred) would not constitute a change in ownership for California property tax purposes.

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 appropriate assessor in order to confirm that the described property will be assessed in a manner consistent with the conclusions stated above.

Ms.

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January 10, 1996

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,



Eric F. Eisenlauer  
Staff Counsel III

EFE:ba

cc: Mr. James Speed - MIC:63  
Mr. Dick Johnson - MIC:64  
Ms. Jennifer Willis - MIC:70

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