STATE OF CALIFORNIA

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Executive Director

January 14, 1991

Re: Claim for Reassessment Exclusion for Transfer between Parent and Child under Proposition 58 (California Revenue and Taxation Code Section 63.1)
APN: 254-361-03-00
Previously reported as APN: 849-015-95-54

Dear Ms. :

Thank you for providing us with a copy of the A Living Trust. In your letter of October 19, 1990, you requested our opinion as to whether the parent-child exclusion is available under the facts contained in your letter and the provisions of the A Living Trust set forth below.

Facts

You represent J D M , successor trustee of the A Living Trust. Mr. M has been attempting to administer his mother's trust according to her expressed wishes since her death on March 23, 1987.

The Trust provides in relevant part:

> "12.1 Upon the death of the Grantor, the Trustee shall distribute the trust assets as follows:
>
> . . .
>
> 12.1.2 The residue to Grantor's children, J D M and J H , in equal shares, if they survive Grantor; however, with respect to Grantor's real property, for as long as Grantor's daughter, JUANITA HOMER chooses to continue to reside in her mobile home on the property, she shall be entitled to do so, rent free. During the time that J H chooses to exercise this right, J D , or his

> issue mentioned below if he predeceases Grantor, shall be entitled to the use of the other portion of the property which is occupied by Grantor's house. If J D chooses to use Grantor's house as rental property, any net rental amount collected which is over and above the rental value of J H 'S right to reside rent free shall be distributed equally between J D and J H . The rental value of the respective rights of use shall be determined by and between the parties, if they can agree, or by an independent appraiser if the parties cannot agree. If J H chooses not to exercise her right to continue to reside on the property, the property will be distributed outright, without limitation, in equal shares to J D and J H .

At the time of A 's death, she was the owner of real property in , County, California, which property was her principal residence. Title to the property was held by decedent as trustee of her revocable, grantor trust and had been excluded from reappraisal when she transferred the title to herself as trustee in May, 1986. No probate proceeding was required at the time of the grantor's death because a successor trustee was named in the trust to assume the fiduciary role. Shortly after A 's death, a question arose as to whether or not a special permit which had been issued by the county could be extended. The special permit allowed decedent's daughter to reside in her mobile home on the property so as to care for her mother. The property was now incorporated in the City of and the city would only agree to allow the mobile home to remain on the property if the lot was properly subdivided with a new parcel map recorded. As a condition of allowing the subdivision so that the mobile home could remain on the property, the city required that the mobile home would have to be permanently mounted on the land and meet other code requirements.

To further complicate matters, relations between decedent's two children, your client and his sister, the ultimate beneficiaries of the real property in this parent/child transfer, began to deteriorate rapidly as they tried to work out their differences concerning the disposition of the real property in the trust. Because your client was now the successor trustee, he alone was charged with the administrative tasks of managing the trust, including the real property. However, his sister's personal property mobile home (and primary residence) was physically located on the real property and he had no control over her actions with respect to her personal property. So, your client proposed an agreement to terminate the trust, subdivide the real property and deed the

parcel with the residence on it to himself and the other parcel with the mobile home on it to his sister. This plan was proposed in writing in 1987 and delivered to J H , the other trust beneficiary. Ms. Minick retained her own legal counsel and after three years of heated arguments between the parties, threatening correspondence and a court action, J H finally agreed to all the terms of the originally proposed agreement. Now it only remained to work with the City of Encinitas to complete the subdivision and meet all its requirements at which time it was intended that the actual transfer out of trust would occur and that title would be cleared. It was only in early October of 1990 that this was accomplished and only after a preliminary title search was done pursuant to the process of working with the city was it discovered that title had not been cleared after decedent's death and therefore no application had been made for the Proposition 58 exclusion.

You further maintain that because the children had been unable to cooperate on anything until they resolved their differences, their signatures on the claim form would not have been obtained during the three year period following the death of A .

Based on the foregoing, you request our opinion as to when a purchase or transfer of real property occurs for purposes of filing a claim for the parent-child exclusion under Revenue and Taxation Code* section 63.1

Law and Analysis

Section 60 defines "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 61 provides in relevant part that except as provided in section 62, change in ownership, as defined in section 60 includes:

> . . .
>
> (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... .

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* All statutory references are to the Revenue and Taxation Code, unless otherwise indicated.

(g) Any interests in real property which vest in persons other than the trustor when a revocable trust becomes irrevocable.

The Board has interpreted the latter provision in Property Tax Rule 462(i)(2)(B) (See Title 18 California Code of Regulations) by providing in part that:

"...a change in ownership does occur at the time the revocable trust becomes irrevocable unless the trustor-transferor remains or becomes the sole present beneficiary."

Section 63.1 provides in relevant part:

(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) 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.

(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.

. . .

(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.

. . .

(7) "Transfer" includes, and is not limited to, 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.
>
> . . .
>
> (d) The exclusions provided for in subdivision (a) shall not be allowed unless the eligible transferee files a claim with the assessor for the exclusion sought... .
>
> . . .
>
> The State Board of Equalization shall design the form for claiming eligibility. Any claim under this section shall be filed within three years after the date of the purchase or transfer of real property for which the claim is filed.
>
> . . .
>
> (f) 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.

Section 67 defines "purchased" or "purchase" as a change in ownership for consideration.

We have taken the position, based on the foregoing provisions, that the word "transfer" for purposes of section 63.1 means a change in ownership without consideration.

Thus, since there was a change in ownership upon the death of A (§§60, 61(f), 61(g), Property Tax Rule 462(i)(2)(B)) and since the present beneficial interest in the real property passed from A to her two children at that time through the medium of the trust, there was a transfer of real property for purposes of section 63.1 at that time. Further, since the children became the present beneficial owners of the real property at the time of A 's death, any subsequent conveyance to the children by the trustee would convey at most only legal title (Allen v. Sutter County Board of Equalization (1983) 139 Cal. App. 3d 887, 890) and thus would not constitute a "transfer" as defined in section 63.1(c)(7) for purposes of Proposition 58 and section 63.1. The case of Larson v. Duca (1989) 213 Cal. App. 3d 324 is distinguishable in that a

probate estate rather than a trust was involved. See the Board's letter to assessors dated January 10, 1990 (No. 90/03) setting forth the Board's position as to the applicability of that case (copy enclosed).

Accordingly, the three year period for filing a claim under section 63.1 began to run at the time of A 's death and not at the time of the conveyance out of the trust.

You have also asked that under the particular circumstances of this case, we apply the expressly stated legislative intent of "substance over form" and find that the three year period for filing of claims, either has yet to begin or that it does not serve as an absolute bar of the exclusion in this case.

Since a transfer occurs under section 63.1 when present beneficial ownership of real property passes from parent to child (§§63.1(c)(7)) and since the children clearly became the present beneficial owners of the real property at the time of A 's death, there is no legal basis for us to conclude that a transfer under section 63.1 occurred at any later time. Further, section 63.1 provides for no exceptions to the three year period for filing claims. It is possible, of course, that a court could determine that the three year claim period limitation is unconstitutional because no such limitation is contained in Proposition 58, however, the Board cannot make that determination (California Constitution, Article III, section 3.5).

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

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

Eric F. Eisenlauer
Tax Counsel

EFE:ta
2932D
Enclosure
cc: Honorable
County Assessor
Mr. John W. Hagerty
Mr. Verne Walton