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April 7, 2015

Ms.
 San Luis Obispo County Assessor's Office
 County Government Center
 1055 Monterey Street, Suite D-360
 San Luis Obispo, CA 93408

Re: *Change in Ownership – Life Estate Remainder Interest Transfers*
Assignment No.: 14-115

Dear Ms. _____ :

This is in response to your letter to the Board of Equalization's Legal Department, wherein you requested guidance regarding change in ownership consequences following the termination of a life estate. Your letter poses several different hypothetical situations, set forth below, which are followed by our responses.

Article XIII A, section 2 of the California Constitution requires the reassessment of real property upon a "change in ownership," unless an exclusion applies. Revenue and Taxation Code¹ section 60 provides that a change in ownership is "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 excludes certain transfers from change in ownership, including any transfer by an instrument whose terms reserve to the transferor an estate for life. However, the termination of such an estate for life shall constitute a change in ownership, except as provided in subdivision (d) and in Section 63. (Rev. & Tax. Code, § 62, subd. (e).)

Subdivision (a) of Property Tax Rule² (Rule) 462.060, which interprets and implements section 61, subdivision (g), provides that:

The creation of a life estate in property is a change in ownership at the time of transfer unless the instrument creating the life estate reserves such estate in the transferor or the transferor's spouse. However, the subsequent transfer of such life estate by the transferor or the transferor's spouse to a third party is a change in ownership. Upon termination of such a reserved life estate, the vesting of a right to possession or enjoyment of a remainderman (other than the transferor or the transferor's spouse) is a change in ownership.

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

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

Section 63.1 excludes from change in ownership transfers between parents and children of any number of principal residences and the first \$1 million of full cash value of other real property of an eligible transferor. (Rev. & Tax. Code, § 63.1, subs. (a)(1) & (2).) Section 63.1, subdivision (c)(9) specifies that "transfer" includes any transfer of beneficial ownership of property from an eligible transferor to an eligible transferee through the medium of an inter vivos or testamentary trust.

In addition, section 62, subdivision (a)(2) excludes from change in ownership a transfer of real property between legal entities or between a legal entity and an individual that results solely in a change in the method of holding title and in which the proportional ownership interests in all real property transferred remains the same after the transfer.

In light of the above, set forth below are the examples and questions posed in your letter, followed by our responses.

1. *Mother (A) transfers to Daughter (B), and reserves a life estate in 2001. B transfers her remainder interest to her son (C, grandson of A) in 2006. A dies in 2014.*

Present beneficial interest transfers from A to C (B is still alive). However, B is the grantor of C's remainder interest. Is this a reassessment, or is this eligible for a parent/child exclusion for a transfer from B to C? Please explain.

Here, in 2001, when A transfers a remainder interest in property to B and reserves a life estate for herself, there is no transfer of a present beneficial interest in real property. (Rev. & Tax. Code, § 60, 62, subd. (e).) By reserving a life estate, A retains the present beneficial interest in the property. B possesses a future interest in the property. Therefore, because the transfer does not meet the requirements of section 60, the 2001 transfer does not result in a change in ownership.

Similarly, B's transfer of her remainder interest to C in 2006 is a transfer of a future interest. Because B did not transfer a present beneficial interest to C, the 2006 transfer does not constitute a change in ownership. Upon A's death in 2014, the property is transferred from A to C, resulting in a change in ownership. (Rev. & Tax. Code, § 61, subd. (g); Rule 462.060, subd. (a).) Thus, because A (C's grandparent) is the transferor of C's interest, the transfer does not qualify for the parent-child exclusion. (Rev. & Tax. Code, § 63.1.)

2. *Mother (A) transfers to Daughter (B), and reserves a life estate in 2001. B transfers her remainder interest to her revocable trust in 2006. A dies in 2014.*

Present beneficial interest passes from A to B. However, B transferred her remainder interest to a trust, so the trust's remainder interest is not a grant from A but from B. Is this eligible for a parent/child exclusion for a transfer from A to B, or is this excluded from reassessment under R&T 62(d)? Please explain.

As noted above, the 2001 transfer is not a change in ownership because A retains the present beneficial ownership in the property by reserving a life estate. (Rev. & Tax. Code, §§ 60, 62, subd. (e).) B's transfer of her remainder interest to B's revocable trust in 2006 is a transfer of a future interest to B, as the beneficiary of her own revocable trust. Because B did not transfer a present beneficial interest, the 2006 transfer does not constitute a change in ownership. Upon the vesting of the interest in B's trust at the time of A's death in 2014, the future interest becomes a present beneficial interest. (Rev. & Tax. Code, § 61, subd. (g); Rule 462.060, subd. (a).) This is considered a transfer from A to B (through B's revocable trust), which generally results in a change in ownership. However, because B is A's child, the transfer qualifies for the parent-child exclusion, assuming a timely claim is filed. (Rev. & Tax. Code, § 63.1.)

3. *Mother (A) transfers to Daughter (B), and reserves a life estate in 2001. B transfers her remainder interest to an irrevocable trust that is for B's benefit in 2006. A dies in 2014.*

Present beneficial interest passes from A to B. However, B transferred her remainder interest to a trust, so the trust's remainder interest is not a grant from A but from B. Is this eligible for a parent/child exclusion for a transfer from A to B, or is this excluded from reassessment under R&T 62(d)? Does it make a difference who is the trustor of the irrevocable trust? (For this example, suppose that B is the trustor.) Please explain.

As discussed above, the 2001 transfer is not a change in ownership because A retains the present beneficial ownership in the property by reserving a life estate. (Rev. & Tax. Code, §§ 60, 62, subd. (e).) B's transfer of her remainder interest to B's irrevocable trust in 2006 is a transfer of a future interest to B, as the beneficiary of the irrevocable trust. Because the 2006 transfer is not the transfer of a present beneficial interest, it does not constitute a change in ownership. Upon A's death in 2014, the property is transferred to B through B's irrevocable trust (Rev. & Tax. Code, § 61, subd. (g); Rule 462.060, subd. (a)), which generally results in a reassessment. However, because B is A's child, the transfer qualifies for the parent-child exclusion, assuming a timely claim is filed. (Rev. & Tax. Code, § 63.1.)

The identity of the trustor of the irrevocable trust is not relevant in this case, because the trustor only transfers a future interest in 2006, not a present beneficial interest, therefore not resulting in a change in ownership. The 2014 transfer is from A to B as the beneficiary, not the trustor, of the irrevocable trust.

4. *Mother (A) and Father (B) transfer to Daughter (C), and each reserves a life estate for themselves in 2001. C transfers her remainder interest to an irrevocable trust that benefits A, B, and C in 2006. (C is the trustor of the trust.) B dies in 2010. C dies in 2014.*

In 2010, present beneficial interest passes from B to A and C (within the irrevocable trust) as to a 50% interest. C granted the remainder interest to the irrevocable trust that was for the benefit of A, B, and C. Is this eligible for a parent/child exclusion from B to C for 25%? Or is this eligible for a parent/child exclusion from C to A for 25%, and is the transfer of remainder interest from C to C excludable under R&T 62(a)(2)?

In 2013, present beneficial interest passes from A to C as to a 50% interest. Is this eligible for a parent/child exclusion from A to C, or is this excluded as being a transfer from C to C?

There is no change in ownership in 2001, because A and B retain present beneficial ownership in the property by reserving a life estate. (Rev. & Tax. Code, §§ 60, 62, subd. (e).) In 2006, C's transfer of her future interest in the property to an irrevocable trust does not constitute a change in ownership, as there is no transfer of a present beneficial interest. Since it would be impossible for C to transfer the remainder interest to A and B after their own deaths, we assume that C's irrevocable trust is for the benefit of herself, the estate of A, and the estate of B. However, with regards to the property at issue, A and B have already (in 2001) granted this property to C upon their deaths (in other words, through their estates). For that reason, upon the deaths of A and B, the subject property transfers to C within the irrevocable trust, and any portion of the subject property in the irrevocable trust going to the estate of A or the estate of B will also transfer to C.

In 2010, when B dies, you state that the "present beneficial interest passes from B to A and C (within the irrevocable trust)". However, that appears to be contrary to your statement that B grants the remainder interest in the property to C in 2001. If A and B had each owned half the property as separate property in 2001, then B's 50 percent interest passes to C upon his death, thus qualifying for the parent-child exclusion. If instead A and B own the property as community property with a right of survivorship, all of the present beneficial interest in the subject property would remain with A upon B's death, thus qualifying for the interspousal exclusion.

You continue that, "[i]n 2013, present beneficial interest passes from A to C as to a 50% interest." Therefore, we assume that A dies in 2013. Pursuant to the 2001 transfer, A's entire interest in the property passes to C, thus qualifying for the parent-child exclusion, assuming a claim is timely filed. (Rev. & Tax. Code, § 63.1.)

5. *Mother (A) transfers equally to Daughter (B) and Son (C), and reserves a life estate in 2001. B dies in 2006, and she leaves her remainder interest to her brother (C). A dies in 2014.*

Present beneficial interest transfers from A to C. However, C's remainder interest has been granted 50% by A and 50% by B. Is this a 50% reassessment for a transfer from B to C, and 50% eligible for a parent/child exclusion for a transfer from A to C? Or is this eligible for a 100% parent/child exclusion from A to C? Please explain.

The 2001 transfer is not a change in ownership, because A retains present beneficial ownership of the property by reserving a life estate for herself. (Rev. & Tax. Code, §§ 60, 62, subd. (e).)

At B's death in 2006, the transfer of her remainder interest to C is a transfer of a future interest. Because B does not transfer a present beneficial interest to C upon her death, the 2006 transfer does not constitute a change in ownership. (Rev. & Tax. Code, § 60.) However, upon A's death in 2014, the future interest vests and becomes a present beneficial interest, resulting in a transfer of 100 percent of the property from A to C. (Rev. & Tax. Code, § 61, subd. (g);

Rule 462.060, subd. (a).) Because C is A's child, the parent-child exclusion would be available for the entire property, assuming a timely claim is filed. (Rev. & Tax. Code, § 63.1.)

6. *Mother (A) transfers to an irrevocable trust and reserves a life estate in 2007. The irrevocable trust is for the benefit of Daughter (B), and the trustor of the trust is A's father (C, grandfather of B). C died in 1980, and was never an owner of the property. A dies in 2014.*

Present beneficial interest transfers from A to B. Is B eligible for a parent/child exclusion from A to B? Is this a reassessment? (While A granted the remainder interest, the trustor (C) is the one who determined that B was beneficiary of the trust. Since C never was on title to the property, is this after-acquired trust interest that is not eligible for the grandparent/grandchild exclusion?) Please explain.

The 2007 transfer is not a change in ownership because A retains present beneficial ownership of the property by reserving a life estate for herself. (Rev. & Tax. Code, §§ 60, 62, subd. (e).)

In 2014, B's remainder interest (through the irrevocable trust) vests and becomes a present beneficial interest. (Rev. & Tax. Code, § 61, subd. (g); Rule 462.060, subd. (a).) This constitutes a transfer from A to B (as the beneficiary of the irrevocable trust). Generally, trustors are considered to be the transferor of real property that passes to beneficiaries under the terms of their trust instruments. (See Property Tax Annotation (Annot.) 493.0131 (December 22, 2008).) However, in this case, the property is considered a "later-acquired interest"³ of the trust because it was acquired by the trust after the trustor's death. Since C never had beneficial ownership of the property, it is not considered "other real property of an eligible transferor," and therefore does not qualify for the grandparent-grandchild exclusion under section 63.1, subdivisions (a)(2) and (a)(3). Here, A is the transferor of the property, and A's daughter, B, is the transferee. Thus, upon A's death in 2014, when B's interest vests, the parent-child exclusion is available, assuming a timely claim is filed. (Rev. & Tax. Code, § 63.1.)

7. *Mother (A) transfers to Daughter (B) and reserves a life estate in 2001. B transfers her remainder interest to an irrevocable trust for the benefit of herself in 2006. The trustor of the trust is A's father (C, grandfather of B). C died in 1980, and was never an owner of the property. A dies in 2014.*

Does this have a different outcome than Example 6 above? Please explain.

The 2001 transfer is not a change in ownership, because A retains present beneficial ownership of the property by reserving a life estate for herself. (Rev. & Tax. Code, §§ 60, 62, subd. (e).) B's transfer of her remainder interest to an irrevocable trust for the benefit of herself in 2006 is a transfer of a future interest. Because this is not a transfer of a present beneficial interest, the 2006 transfer is not a change in ownership. (Rev. & Tax. Code, § 60.)

³ Note that we have used the term "later-acquired" rather than "after-acquired." "Later-acquired" property was never owned by the trustor, but was acquired by the trust after the trustor's death. (See Annot. 493.0131, *supra*.) The phrase "after-acquired" only applies in circumstances where a deed purports to convey a greater title or estate in property than is actually owned by the grantor. (See Annot. 220.0004 (November 7, 2006).)

Upon A's death in 2014, B's remainder interest as a beneficiary of the irrevocable trust vests and becomes possessory. (Rev. & Tax. Code, § 61, subd. (g); Rule 462.060, subd. (a).) For the same reasons explained in the response to #6 above, C is not the transferor of the property, because he never owned the property. Here, the transferor of the property is A, and the transferee is A's daughter, B. Thus, the parent-child exclusion is available for the 2014 transfer, assuming a timely claim is filed. (Rev. & Tax. Code, § 63.1.)

8. *Mother (A) transfers equally to Daughter (B) and Son (C), and reserves a life estate in 2001. B and C transfer their remainder interest to LLC 1 in 2006. B and C are equal members of LLC 1. A dies in 2014.*

Present beneficial interest transfers from A to LLC 1. B and C are the grantors of LLC 1's remainder interest. Is this a reassessment since LLC 1 is not eligible for a parent/child exclusion, or is this eligible for an exclusion under 62(a)(2)? Please explain.

The 2001 transfer is not a change in ownership, because A retains present beneficial ownership of the property by reserving a life estate for herself. (Rev. & Tax. Code, §§ 60, 62, subd. (e).) B and C's 2006 transfers of each of their 50 percent remainder interests to LLC 1 are transfers of future interests to a legal entity. Thus, because there is no transfer of a present beneficial interest, the 2006 transfers do not constitute change in ownership. (Rev. & Tax. Code, § 60.)

When A dies in 2014, the future interests held by LLC 1 vest and become possessory. (Rev. & Tax. Code, § 61, subd. (g); Rule 462.060, subd. (a).) Because A is considered the transferor and LLC 1, a legal entity, is the transferee, the parent-child exclusion does not apply. (Rev. & Tax. Code, § 63.1, subd. (c)(3)(8).) Because LLC 1 is owned 50 percent by B and 50 percent by C, the transfer from A is not a proportional transfer, and thus does not qualify for the section 62, subdivision (a)(2) exclusion.

9. *Mother (A) transfers to Daughter (B), and reserves a life estate in 2001. A transfers her life estate interest to her son (D, brother of B) in 2008, and files a parent/child exclusion. A dies in 2014.*

Present beneficial interest transfers from D to B. A granted B's remainder interest. Is this eligible for a parent/child exclusion from A to B? Please explain.

As discussed above, the 2001 transfer is not a change in ownership, because A retains present beneficial ownership of the property by reserving a life estate for herself. (Rev. & Tax. Code, §§ 60, 62, subd. (e).) A's subsequent transfer of her life estate in 2008 to her son, D, is a change in ownership, because present beneficial ownership transfers from A to D. (Rev. & Tax. Code, § 60; Rule 462.060, subd. (a).) Because D is A's child, the 2008 transfer qualifies for the parent-child exclusion, assuming a claim is timely filed. (Rev. & Tax. Code, § 63.1.)

Upon A's death in 2014, B's remainder interest vests and becomes possessory. (Rev. & Tax. Code, § 61, subd. (g); Rule 462.060, subd. (a).) Because A is the transferor of the remainder interest, the 2014 transfer to B, her child, qualifies for the parent-child exclusion. (Rev. & Tax. Code, § 63.1.)

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

LA:yg

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cc: Honorable Marc C. Tonnesen
President, California Assessors' Association
Solano County Assessor

Mr. Dean Kinnee MIC:64

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