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May 7, 2004

Office of the Amador County Assessor  
500 Argonaut Lane  
Jackson, CA 95642

***Re: Revenue and Taxation Code section 63.1 – Filing of Certification of Trust***

Dear Ms.       :

This is in reply to your letter dated November 12, 2003 addressed to Assistant Chief Counsel Kristine Cazadd in which you request a legal opinion concerning whether a claimant for the exclusion pursuant to Revenue and Taxation Code section 63.1 may file a certification of trust rather than the trust instrument. An attorney who represents claimants has asserted that the law requires only that a claimant file a certification of trust. You suggest that a certification of trust is not sufficient because it does not identify the beneficiaries or their interests in the property held in trust. For the reasons set forth below, we agree that the certification of trust is not sufficient evidence upon which to make a determination of eligibility and that you may require a claimant for the exclusion to submit either the trust instrument, or to include in the certification, all information concerning the identity and interests of the beneficiaries, the powers of the trustee, and other relevant terms, as a condition of processing and granting the exclusion.

**Law and Analysis**

Section 63.1 provides, in relevant part, for the exclusion from change in ownership, under specified conditions, of certain transfers of real property between parents and children and from grandparents to grandchildren. Subdivision (c)(9) defines the term “transfer” to include “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.” 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.” For purposes of change in ownership, the present beneficiary or beneficiaries of an irrevocable trust hold the present, beneficial interest in the property within the meaning of section 60.

The exclusion pursuant to section 63.1 is applicable only to transfers that result in a change in ownership. Property Tax Rule 462.160, subsection (b)(1)(A) provides, in an irrevocable trust, that “a change in ownership of trust property does occur to the extent that persons other than the trustor-transferor are or become present beneficiaries of the trust . . .” Thus, to determine whether the section 63.1 exclusion applies to a transfer through the medium of a trust, the assessor must obtain documentation sufficient to identify each present beneficiary and the real property interests transferred to each present beneficiary.

As you note in your letter, the certification of trust provided by the claimants' attorney does not state the names of the beneficiaries or the property interests owned by the trust. For that reason, you have requested copies of the trust documents that include the beneficiary and property interest information necessary to make a determination as to eligibility for the section 63.1 exclusion. The California courts have long-recognized that a taxpayer is required to provide any relevant information requested by the assessor for property tax assessment purposes. See *Simms v. Pope* (1990) 218 Cal.App.3d 472, 477; *Domenghini v. County of San Luis Obispo* (1974) 40 Cal.App.3d 689, 695. If a taxpayer fails to furnish complete information necessary to enable the assessor to make an exclusion eligibility determination, the assessor must perform that statutory duty based on incomplete evidence, which may result in a denial of the exclusion. "If that evidence is less than the best, the [t]axpayer has no one to blame but himself." *Domenghini* at p.695.

In view of the taxpayer's duty to provide information, we conclude that a claimant is required to provide information sufficient to support its claim as a condition of receiving the exclusion.<sup>1</sup> Evidence about the identity and interests of the trust beneficiaries, the powers of the trustee to distribute the trust property and assets, and other terms relevant to the disposition of the trust assets is necessary for the assessor to determine whether the parent/child or the grandparent/grandchild exclusion, (or the recently adopted registered domestic partners' exclusion [Rule 462.240 subdivision (k)]) applies.

We assume that the law cited by the claimants' attorney is Probate Code section 18100.5 which provides, in part, that "[a] trustee may present a certification of trust to any person in lieu of providing a copy of the trust instrument to establish the existence or terms of the trust." However, this statutory provision does not relieve a claimant of the duty of providing the relevant portions of the trust instrument. The legislative history discloses that this provision is intended to provide legal protection for third persons who deal with a trustee. The Senate Floor Bill Analysis for AB 1249 (Stats. 1993, Ch. 530 §2) dated August 27, 1993, the legislation that added section 18100.5, states that the purpose of the bill is to "repeal and replace provisions in current law pertaining to a trustee's ability to deal with a third person by executing an affidavit which states the trustee's qualifications and powers under the trust by a more comprehensive scheme for certification of trust instruments and reliance by third parties." Thus, it is our view that the section 18100.5 is applicable only when a third party who has no right to copy of the trust instrument is required to rely on a trustee's representations of qualifications and powers. The section is inapplicable in this instance where the terms of the trust instrument naming the beneficiaries and their interests in the trust property are necessary to make a legal determination of eligibility for a tax benefit, and where the taxing authority has a legal duty to protect the confidentiality of the trust instruments. Section 441.

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<sup>1</sup> We note that a property tax exemption, like a change in ownership exclusion, is a tax benefit and that persons claiming the benefit of the exemption bear the burden of showing that they clearly meet the qualification requirements. *Cedars of Lebanon Hospital v. Los Angeles County* (1950) 35 Cal. 2d 729, 734:

Moreover, it appears that probate section 18100.5 is not applicable here because a claimant for the parent-child exclusion is not subject to the section. The section expressly applies only to a trustee of a trust, and not to the beneficiary or the trustor. Under section 63.1, the beneficiary is the eligible transferee of a transfer through the medium of trust. As the eligible transferee of the property, the beneficiary is the claimant for the parent-child exclusion and a beneficiary may not invoke section 18100.5.

We note that section 63.1 includes provisions for the filing of “written certifications” signed and made under penalty of perjury by the “eligible transferor” and the “eligible transferee,” attesting that certain qualifying conditions of the section have been met. However, such certifications are statements or declarations made by those persons to comply with those specific requirements, which requirements do not include any provision for the filing of a certification of trust document.

In summary, there is no provision in section 63.1 or any other Revenue and Taxation Code section that provides that the submission of a certification of trust without the identity and interests of the beneficiaries and other relevant terms regarding the disposition of the trust property and assets satisfies a claimant’s duty to furnish information as a condition of receiving a claim for exclusion pursuant to that section.

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.

Very truly yours,

*/s/ Kris Cazadd for*

Lou Ambrose  
Supervising Tax Counsel

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cc: Mr. David Gau, MIC:63  
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