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(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

(916) 324-6594

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March 23, 1992

Re: H and L E /Ruling Request

Dear Mr. :

This is in response to your letter of January 2, 1992 to Mr. Richard Ochsner in which you request our opinion as to whether a change in ownership for property tax purposes will occur as a result of the following facts and proposed transactions set forth in your letter.

H and L E originally established The Trust on December 19, 1973. While H and L were both living, they were the beneficiaries of The Trust, and The E Trust could be amended or revoked by them at any time. H and L E transferred all of their real property to The E Trust.

L E died on June 3, 1989. She was survived by H E and by her four children, all of whom are still living.

The E Trust provides that if L E were the first Trustor to die, \$600,000 of fair market value of property is to be allocated to a sub-trust known as the "Exemption Trust". This is the maximum amount covered by L E's unified credit under Section 2010 of the Internal Revenue Code. The assets allocated to the Exemption Trust were, in turn, to be distributed to the Trustees of The 1988 E Trust, a copy of which was provided with your letter.

Section 3.01 of The 1988 E Trust provides that, in the absence of a specific designation by the donor, the Trustee is to divide additions to the trust estate into equal shares for the beneficiaries living on the date of the gift. The beneficiaries of The 1988 E Trust are H and L E's children, M, B, R, and C.

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Section 2.02(A) of The 1988 E Trust provides that as long as H E is living, the Trustee shall accumulate the net income of each beneficiary's respective Trust.

Section 3.02(B) of The 1988 E Trust provides that in each year in which property is added to a beneficiary's trust, the beneficiary has the right to withdraw the lesser of (i) \$10,000 for the calendar year, or (ii) the amount of addition.

Section 3.03 of the The 1988 E Trust provides that after H E's death, each beneficiary will be entitled to the income of the beneficiary's share until the beneficiary reaches age 45. This section further provides that, after H E's death, the Trustee is to distribute to each beneficiary one-half of the beneficiary's share at age 35, and the remaining balance at age 45.

H E, as Trustee of The E Trust, is contemplating distributing to The 1988 E Trust an interest in real property located in County, California having a fair market value of \$600,000 in satisfaction of the allocation to the Exemption Trust. He is further contemplating exercising his right to withdraw from The E Trust his interest in a parcel of property having a fair market value of \$600,000, and personally contributing that interest to The 1988 Eidelman Trust. The assessed values of the interests in real property which would be contributed to The E Trust are substantially below their current market values, as the assessed value is based upon a 1975 base year assessment.

Based on the foregoing facts, H E requests a ruling that the transfer of an interest in real property from The E Trust to The 1988 E Trust in satisfaction of the \$600,000 allocation to the Exemption Trust will qualify for the parent-child exclusion from property tax reassessment, and that H E's personal contribution of another interest in real property having a fair market value of \$600,000 to The 1988 E Trust will likewise qualify for the parent-child exclusion from property tax reassessment.

Section 2(h) of Article XIII A of the California Constitution provides that "...change of ownership' shall not include... the purchase or transfer of the first one million dollars of the full cash value of all other real property between parents and their children, as defined by the Legislature. This subdivision shall apply to both voluntary transfers and transfers resulting from a court order or judicial decree."

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The California Legislature enacted Revenue and Taxation Code* Section 63.1 to implement the exclusion for transfers between parents and children. Section 63.1(c)(7) provides: "'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."

It has been our position since before the adoption of Proposition 58 that one may be the present beneficiary of a trust even though current income may be paid to such beneficiary or accumulated in the trustee's discretion as long as no other person presently has a right to income or principal.

Here, the Trustee has no discretion to distribute income but must accumulate it and add it to the principal of each child's respective trust during the life of H E . In our view, this is no different for purposes of section 63.1 than if the Trustee had the discretion to distribute or accumulate income for each child. Further, while each child is living, there is no other beneficiary of each child's share in The 1988 E Trust. Moreover, upon H E 's death, each of L and H E 's children will be entitled to the income from the child's share, and ultimately distribution of the principal which includes accumulated income.

Accordingly, we are of the view that the transfers from The E Trust and from H E personally to The 1988 E Trust are transfers of present beneficial ownership from H and L E to their four children and thus qualify for the parent-child exclusion subject, of course, to the limitations and requirements of section 63.1.

H E also requests a ruling that any transfers of interests in real property from a child of H and L E to The 1988 E Trust will be excluded from change in ownership.

Section 62 provides, in relevant part, as follows: "Change in ownership shall not include:..."

"(d) Any transfer by the trustor, or by the trustor's spouse, or both, into a trust for so long as (1) the transferor is the present beneficiary of the trust..."

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

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See also Property Tax Rule 462(i)(2)(A).

Since we concluded above that the children of L and H E have present beneficial ownership of the property of The 1988 E Trust, transfers of interests in real property by those children to The 1988 E Trust will be excluded from change in ownership under section 62(d) and Property Tax Rule 462(i)(2)(A) provided, of course, that each child's transfer is to that child's respective separate trust only and not for any other child's benefit under The 1988 E Trust.

The views expressed in this letter are, of course, advisory only and 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 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
Senior Tax Counsel

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cc: Mr. John W. Hagerty
Mr. Verne Walton