STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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Controller, Sacramento

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Executive Director

February 28, 1992

Dear Mr. :

This is in response to your letter of February 12, 1992 to Mr. Richard Ochsner in which you request our opinion as to when the time period begins for filing a Claim for Reassessment Exclusion for a transfer from a parent to a child through the medium of a trust.

Under the facts set forth in your letter, the parent transferred residential real property to a trust under which the parent will retain the use of the residence for a term of years after which the trust will terminate and the property will be distributed to the children of the trustor.

Revenue and Taxation Code Section 63.1(d) requires that the claim for the parent-child exclusion from change in ownership be filed within three years after the date of the purchase or transfer of real property for which the claim is filed or prior to transfer of the real property to a third party, whichever is earlier.

As explained in the attached copy of a letter from me to Mr. dated November 5, 1991, our view is that the transfer of the real property for purposes of the parent-child exclusion occurs when the remainder interest of the children becomes possessory rather than when it is created. Thus, the claim filing period would begin in this case at the expiration of the parent's term for years (assuming the children's remainder became possessory at that time) rather than when the real property was transferred into the trust.

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any

January 28, 1992

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

Eric F. Eisenlauer
Senior Tax Counsel

EFE:ta
3899D
Enclosure
cc: Mr. John W. Hagerty
Mr. Verne Walton

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(916) 324-6594

November 5, 1991

Mr.

Dear Mr.

This is in response to your letter of September 16, 1991 to Mr. Richard Ochsner in which you request our opinion as to when a transfer from parent to child occurs for purposes of Revenue and Taxation Code* section 63.1 under the following facts:

> The first spouse to die ("Deceased Spouse") creates a trust for the "Surviving Spouse". That trust usually provides for the payment of all of the income to the Surviving Spouse and for the payment of principal to the Surviving Spouse at the discretion of the Trustee, but only for health, support and maintenance in the accustomed standard of living of the Surviving Spouse. The Surviving Spouse may be the Trustee, or a third party or a trust company may be the Trustee. The trust provides that, upon the death of the Surviving Spouse, the trust distributes to the then living children of the Deceased Spouse; but, if any child is then deceased, that child's share will be distributed to his or her descendants by right of representation.

You ask whether the period for filing a claim for the parent-child exclusion begins on the death of the Deceased Spouse or on the death of the Surviving Spouse.

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

Section 63.1 subdivision (a) provides in relevant part:

> 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 children.

Subdivision (d) of section 63.1 provides in pertinent part that "[a]ny claim under this section shall be filed within three years after the date of purchase or transfer of real property for which the claim is filed, or prior to transfer of the real property to a third party, whichever is earlier."

The term "purchase" is not defined in section 63.1. Section 67, however, defines it as "a change in ownership for consideration." "Change in ownership" is, of course, defined by section 60 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."

The term "transfer" is defined in section 63.1 subdivision (c)(7) 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."

From the foregoing, it is clear that a "purchase" or "transfer" for purposes of section 63.1 must be of a <u>present</u> beneficial interest or ownership in real property and does not include the purchase or transfer of a future interest. Thus, any transfer which qualifies as a change in ownership under section 60 (and by definition section 61 as well) would also constitute a transfer for purposes of section 63.1.

At the death of the Deceased Spouse, the Surviving Spouse receives all of the trust income for life which constitutes a present beneficial interest in the trust real

property. Such transfer to the Surviving Spouse would be excluded from change in ownership under section 63. At the death of the Deceased Spouse, however, the children receive only an equitable remainder (i.e., a future rather than a present beneficial interest or ownership in the trust real property). Therefore, no change in ownership between Deceased Spouse and the children or transfer for purposes of section 63.1 occurs at the death of Deceased Spouse.

Such a transfer would not occur until the death of the Surviving Spouse. At that time there would be (but for the application of Proposition 58 and section 63.1) a change in ownership under section 61(f) as a result of the vesting of the right to enjoyment of a remainder interest in Deceased Spouse's then living children which occurred "upon the termination of a life estate or other similar precedent property interest" (i.e., Surviving Spouse's income interest). It is equally clear that at the death of the Surviving Spouse there would be a transfer of the present beneficial ownership of the trust real property from an eligible transferor (Deceased Spouse) to eligible transferees (children) through the medium of an inter vivos or testamentary trust and thus a "transfer" under section 63.1 subdivision (c)(7). The period for filing a claim under section 63.1 subdivision (d) would begin at that time.

You also ask whether our answer would be different if the Surviving Spouse is given a special power of appointment to appoint the trust property upon the death of the Surviving Spouse (a) in any proportion among the then surviving children, or (b) in any proportion among the then surviving children and grandchildren of the spouses.

Our answer would be the same in either case because the "transfer" to children for purposes of section 63.1 would still not occur until the death of the Surviving Spouse.

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county.

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
Senior Tax Counsel

EFE:ta/3691D

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

State of California

Board of Equalization
Legal Division

Memorandum

To: Mr. Tom McClaskey

Date: December 12, 1994

From: Eric Eisenlauer

Subject: Request for Legal Opinion

This is in response to your memorandum of November 1, 1994 to Mr. Richard Ochsner in which you request our opinion regarding a conveyance of real property from a private owner to the federal government. The conveyance involved a grant deed under which Cheda Ranch Associates, Inc. granted to the United States of America approximately 913.64 acres of real property in Marin County subject to various easements but reserved to itself and its heirs, administrators, successors or assigns "the right of use and occupancy for Livestock Ranching and single family residential purposes only for a term of 25 years...."

The county has treated this transfer and others like it as the creation of a possessory interest assessable to the grantor. Your questions and our responses thereto are as follows:

1. Is the transfer of the property to the federal government a reassessable transfer?

Response: Property Tax Rule 462, subdivision (e) provides:

> The creation, renewal, sublease, or assignment of a taxable possessory interest in tax exempt real property for any term is a change in ownership except when the interest, whether an estate for years or an estate for life, is created by a reservation in an instrument deeding the property to a tax exempt governmental entity. (Emphasis added.)

In this case, an estate for years for 25 years was created by a reservation in the grant deed conveying the property to the USA. Accordingly, under Property Tax Rule 462, subdivision (e), the transfer was not a change in ownership and thus was not a reassessable transfer. The assessment in effect at the time of the transfer should, therefore, be continued subject to

appropriate adjustments for inflation or value decline below the adjusted base year value.

2. If not, what happens if the original "reservor" sells his/her interest which is an estate for years?

Response: Property Tax Rule 462, subdivision (d)(2), last sentence, provides that "[t]he creation or transfer of an estate for years for less than 35 years is not a change in onwership." Since the estate for years in this matter is less than 35 years, the transfer of it by sale or gift is not a change in ownership.

3. The Superintendent of this Park Service indicates the possibility is very good that the property will be released upon the expiration of the 25-year estate for years. He states that this has been the practice in the past. However, it would be an open-market bid for the lease. Does this have an impact on the change in ownership questions?

Response: Leasing the property to a private party at the expiration of the estate for years has no impact on change in ownership questions 1 and 2 above. Such a lease, however, would create a taxable possessory and thus constitute a change in ownership under Revenue and Taxation Code section 61, subdivision (b) and Property Tax Rule 462, subdivision (e). Also, when the estate for years terminates, there would be a change in ownership under Property Tax Rule 462, subdivision (d)(2) which provides in part that "[u]pon the termination of a reserved estate for years for any term, the vesting of the right to possession or enjoyment of a remainderman (other than the transferor or the transferor's spouse) is a change in ownership."

4. The Park Service feels they own the property and the original owner (reservor) is only using it. Because of the deed and contract restrictions, the original owner no longer has the equivalent of fee ownership. Who does?

Response: The Park Service owns a vested remainder interest and is, therefore, the owner of the fee.

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cc: Mr. John Hagerty - MIC:64

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