



## STATE BOARD OF EQUALIZATION

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August 19, 2013

**Re: Parent-Child Exclusion – Sale of Trust Property to Trust Beneficiary  
 Assignment No.: 13-110**

Dear Mr. \_\_\_\_\_ :

This is in response to your letter requesting an opinion regarding whether the parent-child exclusion applies to the purchase of real property pursuant to an option to purchase in a trust provision. As explained below, it is our opinion that the parent-child exclusion would be available for the entire property, given that a parent-child exclusion claim form is properly filed and all other requirements are met.

**Factual Background**

According to your letter, your mother, V \_\_\_\_\_ W \_\_\_\_\_, owned real property located at \_\_\_\_\_ Street, \_\_\_\_\_, California (Property). We assume for purposes of the analysis below that the Property was an asset of Ms. W \_\_\_\_\_'s revocable trust, which became irrevocable upon her death, and that you and your two brothers, S \_\_\_\_\_ C \_\_\_\_\_ (S \_\_\_\_\_) and D \_\_\_\_\_ C \_\_\_\_\_ (D \_\_\_\_\_), are the beneficiaries of the trust. You provided us with a copy of Ms. W \_\_\_\_\_'s trust amendment, which states that the child living closest to Ms. W \_\_\_\_\_'s residence shall have the first option to purchase that residence. Your letter informs us that S \_\_\_\_\_ was living closest to the Property and exercised his option to purchase the Property.

**Law and Analysis**

Article XIII A, section 2 of the California Constitution provides that real property must be reassessed whenever a change in ownership occurs. A change in ownership is defined at Revenue and Taxation Code<sup>1</sup> section 60 to mean "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 lists specific transactions that constitute changes in ownership as defined by section 60, including subdivision (h), which states that a change in ownership occurs with respect to "[a]ny interests in real property which vest in persons other than the trustor . . .

<sup>1</sup> All section references are to the California Revenue and Taxation Code unless otherwise indicated.

when a revocable trust becomes irrevocable." In addition, Property Tax Rule<sup>2</sup> (Rule) 462.160 subdivision (b)(1)(A) states 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 unless otherwise excluded from change in ownership."

Therefore, there would be a change in ownership of the Property at the death of Ms. W unless an exclusion applies. Section 63.1 excludes from "change in ownership" specified purchases or transfers of real property between parents and their children for which a valid and timely claim is filed. Subdivision (h) of Section 2 of Article XIII A of the California Constitution provides that the terms "purchased" and "change in ownership" do not include the purchase or transfer of (1) principal residences between parents and children and (2) the first \$1 million of real property other than the principal residence of an "eligible transferor" to an "eligible transferee." Subdivision (c)(9) of section 63.1 specifically provides that a transfer includes "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." In this case, it appears that Ms. W is an eligible transferor and S is an eligible transferee and the parent-child exclusion would apply. The issue is whether the entire property, or only the portion that comprises S's pro rata share of the trust, qualifies for the parent-child exclusion.

In a trust with a "share and share alike" provision, each beneficiary is allocated a pro rata interest in each asset of the trust, subject to the trustee's power to make non pro rata distributions. In such case, if there are sufficient trust assets to equalize the distributions to all other beneficiaries, a trustee may distribute real property to an eligible transferee and other assets to other beneficiaries, and the transfer to the eligible transferee will qualify for the parent-child exclusion under section 63.1. However, to the extent that the value of the real property received exceeds the value of the beneficiary's share of the trust estate it will be considered a transfer from the other beneficiaries and subject to reassessment. (Property Tax Annotation<sup>3</sup> (Annotation) 625.0235 (1/23/1991).)

Your case is different from a typical share and share alike situation because the trust amendment appears to grant a right of first refusal to S, the child of Trustor that lived closest to the Property. With a right of first refusal, the trustee has no power or discretion to transfer the subject property to any of the trust beneficiaries without first offering the right to purchase the property as directed in the trust. You and D possessed interests in the Property that were subject first to the specific right of S to purchase the Property from the trust. Because S exercised his right to purchase the Property for fair market value, you and D never possessed a beneficial interest in the Property. As such, the transfer of the Property from Ms. W, through the medium of a trust, to her son S, qualifies for the parent-child exclusion for the full extent of the transfer, provided that all other requirements are met. (See Annotation 625.0235.025 (2/22/2010).)

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<sup>2</sup> All references to Property Tax Rule or Rules are to sections of title 18 of the California Code of Regulations.

<sup>3</sup> Property Tax Annotations are summaries of the conclusions reached in selected legal rulings of Board Legal counsel published in the Board's Property Tax Law Guide and on the Board's website. See Cal. Code Regs., tit. 18, § 5700 for more information regarding annotations.

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

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cc: Honorable  
County Assessor

Mr. David Gau	MIC:63
Mr. Dean Kinnee	MIC:64
Mr. Todd Gilman	MIC:70