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April 18, 2011

Honorable Jerome E. Horton, Chairman
State Board of Equalization
450 N. Street
Sacramento, CA 95814

**Re: Board Meeting, April 27, 2011
Chief Counsel Matters – Item J-Rulemaking
Petition to amend the following Property Tax Rules related to
change in ownership: 462.060, 462.100, 462.160, 462.180**

Dear Mr. Horton:

This letter is in opposition to Mr. Stephen Bennett's petition dated March 21, 2011. This opposition will concentrate on section II C of page 3 of Mr. Bennett's petition. Please note that we agree with the analysis, reasoning, and conclusions stated in the Acting Chief Counsel's Memorandum dated April, 13, 2011 ("Chief Counsel's Memorandum").

Mr. Bennett refers to annotations 220.0780 and 220.0786. But after reviewing those annotations, it appears evident that Mr. Bennett misconstrues what they say.

In addition, Mr. Bennett's double taxation argument is misplaced. As explained in the Chief Counsel's Memorandum, there is no double taxation when a separate real property interest is being assessed at a different time.

In *Steinhart v. County of Los Angeles* ("*Steinhart*") (2010) 47 Cal. 1298,¹ the court based its change in ownership determination under Revenue and Taxation Code sections² 61(h), 62(d), and California Code of Regulations, title

¹ The undersigned, Richard Girgado, successfully argued the *Steinhart* case for the County of Los Angeles in the California Supreme Court.

² All references are to the Revenue and Taxation Code unless otherwise indicated.

18, section 462.160. Section 61(h) triggers a change in ownership when a revocable trust becomes irrevocable. Since that section sufficed to find a change in ownership, the *Steinhart* court felt that inquiry into section 61(g) was beyond the scope of the case, therefore, it did not elaborate on said section. Section 61(g) triggers a change in ownership when there is "Any vesting of the right of possession or enjoyment of a remainder or reversionary interest that occurs upon the termination of a life estate or other similar precedent property interest . . ."

Certainly the *Steinhart* court did not find any Revenue and Taxation Code sections suspect, nor did it invalidate any regulations under title 18 of the California Code of Regulations. In fact, it stated that "We generally accord 'great weight' to the statutes the Legislature has passed and the regulations the State Board of Equalization has promulgated to implement article XIII A. [Citation]" (*Steinhart, supra*, (2010) 47 Cal. 1298, 1322.)

But under *Phelps v. Orange County Assessment Appeals Bd. No. 1* ("*Phelps*") (2010) 187 Cal.App.4th 653 and *Reilly v. City and County of San Francisco* ("*Reilly*") (2006) 142 Cal.App.4th 480, it is clear that each time there is a new present beneficiary to a trust, there is a change in ownership. This does not equate to "double taxation" because a separate real property interest is being assessed at a different time.

The Chief Counsel's Memorandum correctly explains the court's analysis in *Phelps*. But even before *Phelps*, the *Reilly* court stood for the same proposition.

"Indeed, subdivision (g) of section 61 provides that a change in ownership occurs when there is '[a]ny vesting of the right to possession or enjoyment of a remainder or reversionary interest upon the termination of a life estate or other similar precedent property interest' . . . Consequently, under section 61, subdivision (g), the termination of one life estate followed by the creation of a new life estate is a change in ownership." (*Reilly, supra*, 142 Cal.App.4th 480, 496.)

The *Reilly* court also looked to California Code of Regulations, title 18, section 462.160, subdivisions (b)(1)(A), (2) and (3), and said that the pertinent regulation "provides that a change in ownership occurs not just when certain persons are present beneficiaries upon creation of a trust, but also when certain persons become present beneficiaries after a trust has been created." (*Reilly, supra*, 142 Cal.App.4th 480, 489.) The proposition that there is a change in ownership reassessment when there is a new beneficial owner is not "double taxation."

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In addition, the Chief Counsel's Memorandum is correct by pointing out that if a change in ownership occurs on the date of the transfer, it can't be an assessment of a past or future interest.

In conclusion, Mr. Bennett's petition should be denied.

Very truly yours,

ANDREA SHERIDAN ORDIN
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By 

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RG:htb

c: Honorable Michelle Steel, Vice Chair
Honorable Betty T. Yee, First District
Senator George Runner, Second District
Honorable John Chiang, State Controller