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Executive Director

June 21, 2000

**Re: *Request for Legal Opinion – Application of Rev. and Tax. Code Section 64(a)***

Dear Mr. \_\_\_\_\_,

This is in reply to your letter of June 13, 2000 addressed to Senior Tax Counsel Kristine Cazadd in which you request our opinion concerning the change in ownership consequences of a potential transfer of corporate stock held in trust to three beneficiaries of the trust upon the death of the fourth beneficiary. As you state in your letter, all the voting capital stock of Corporation X is held by an irrevocable trust of which individuals S, A, B and C are the income beneficiaries. Corporation X owns real property which it has held prior to the formation of the trust in 1969. Income from the trust is distributed 75% to S with the remaining 25% distributed equally to A, B and C. The trust provides that upon the death of S, the trust is terminated and the stock of Corporation X will be distributed in equal shares to A, B and C. In your view, the distribution of the stock of Corporation X to A, B and C will not result in a change in ownership of the real property owned by Corporation X. For the reasons set forth below, we agree with your conclusion that the distribution will not result in a change in ownership.

Law and Analysis

Revenue and Taxation Code 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 property held by an irrevocable trust, the beneficiaries are considered to own the beneficial interest in the trust property. Thus, a transfer from an irrevocable trust to the trust beneficiaries does not result in a change in ownership because one of the necessary elements of a change in ownership – the transfer of the beneficial interest – is lacking. Accordingly, if the trust transferred 75% of the stock of Corporation X to S and the remaining 25% equally to A, B and C, there would be no change in ownership.

Section 64, subdivision (a) provides that a transfer of ownership interests in a legal entity, such as corporate stock or partnership or limited liability company interests, shall not be deemed

to constitute a transfer of the real property of the legal entity. Section 64, subdivision (c) is an exception to the foregoing and provides

(c)(1) When a corporation, partnership, limited liability company, other legal entity, or any other person obtains control through direct or indirect ownership or control of more than 50 percent of the voting stock of any corporation, or obtains a majority ownership interest in any partnership, limited liability company, or other legal entity through the purchase or transfer of corporate stock, partnership, or limited liability company interest, or ownership interests in other legal entities, including any purchase or transfer of 50 percent or less of the ownership interest through which control or a majority ownership interest is obtained, the purchase or transfer of that stock or other interest shall be a change of ownership of the real property owned by the corporation, partnership, limited liability company, or other legal entity in which the controlling interest is obtained. Section 61, subdivision (i) and section 64, subdivision (d) also provide for exceptions to subdivision (a), but those exceptions are not applicable to the facts presented.

Under the facts presented, the distribution of the 25% of the stock of Corporation X from the trust equally to A, B and C would not result in changes in ownership because, as explained above, the beneficiaries hold the beneficial interests in their respective stock prior to the transfers. As to the trust's transfer of S's 75% of the stock in equal shares to A, B and C, neither would that transfer result in a change in ownership. As a result of the transfer, A, B and C would each receive an additional 25% of the stock of Corporation X and would each hold 33.33% of said stock. The transfer of these additional 25% interests would be excluded under section 64(a), and section 64(c) would not apply because neither A, B nor C would obtain control of the voting stock of Corporation X after the transfer. As indicated, each would have 33.33% of such stock after the transfer.

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. You may wish to consult the Los Angeles County Assessor's Office to ascertain whether they are in agreement with the foregoing analysis and conclusion.

Very truly yours,

*/s/ Louis Ambrose*

Louis Ambrose  
Tax Counsel

June 21, 2000

Page 3

cc:

Mr. Dick Johnson, MIC:63

Mr. David Gau, MIC:64

Mr. Charles Knudsen, MIC:62

Ms. Jennifer Willis, MIC:70