



STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
916-322-4286 • FAX 916-323-3387
www.boe.ca.gov

BETTY T. YEE
Acting Member
First District, San Francisco

BILL LEONARD
Second District, Sacramento/Ontario

CLAUDE PARRISH
Third District, Long Beach

JOHN CHIANG
Fourth District, Los Angeles

STEVE WESTLY
State Controller, Sacramento

RAMON J. HIRSIG
Executive Director

June 14, 2006

Re: *Interspousal Exclusion - Purchase of Life Estate*

Dear Mr. _____ :

This is in response to your September 14, 2005 correspondence addressed to the State Board of Equalization's Norwalk Office, together with your letter to the Los Angeles County Assessor dated August 25, 2005. You request a legal opinion as to whether the wife's purchase of her husband's life estate in trust property will trigger a reassessment. We conclude that the interspousal exclusion applies to the wife's purchase of her husband's life estate.

Background and Facts

According to your letter and our telephone conversations on February 7, 2006, and March 27, 2006, Peter and Yvonne, husband and wife, transferred their residence (residence) into a revocable living trust. Upon Yvonne's death, 40 percent interest in the residence was placed into irrevocable new trust A (survivor's trust). Peter is the sole present beneficiary of the survivor's trust. The remaining 60 percent interest in the residence was placed into new trust B (decedent's trust). Peter is the sole present lifetime beneficiary of the income of the decedent's trust. Peter, as the trustee of the decedent's trust, has the right to distribute the corpus of the trust to himself as the beneficiary. Peter and Yvonne's children have the remainder interest in the decedent's trust.

Peter has now married Eve. Eve wishes to purchase the 60 percent interest in the residence from the decedent's trust. The remainder beneficiaries have given their written consent to the transaction.

Applicable Law

A change in ownership occurs upon the 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. (Rev. & Tax. Code, § 60.) A change in ownership, however, does not include any transfer by the trustor, or by the trustor's spouse, or by both, into a trust so long as the transferor is the present beneficiary of the trust or the trust is revocable. (Rev. & Tax. Code, § 62, subd. (d).) Additionally, the transfer of a life estate constitutes a change in ownership of the property.

(Property Tax Rule 462.060, subd. (a).) However, a change in ownership does not include any interspousal transfer. (Rev. & Tax. Code, § 63.)

Analysis

When Peter and Yvonne, spouses, transferred their primary residence into a revocable living trust, no change in ownership resulted because they, as the trustors, were the present beneficiaries of the trust. (See Rev. & Tax. Code, § 62, subd. (d).) Upon Yvonne's death, two irrevocable trusts were created. The transfer of the residence, 40 percent interest and 60 percent interest to the survivor's trust and the decedent's trust, respectively, did not result in a change in ownership because the beneficiary was the trustor or the trustor's spouse. (See Rev. & Tax. Code, § 62, subd. (d); See Property Tax Annotation 220.0764)

Because Peter is the sole present beneficiary of the irrevocable decedent's trust that was created upon Yvonne's death, Peter is considered to be the owner of the trust property. (See Property Tax Annotation 220.0761.) Thus, the transfer of the 60 percent interest in the residence to his current wife, Eve, would be excluded from change in ownership as an interspousal transfer. (Rev. & Tax. Code, § 63.)

The views expressed in this letter are only advisory in nature. They represent the analysis of the legal staff of the Board based on past and present law and the facts set forth herein. Therefore, they are not binding on any person or public entity.

Very truly yours,

/s/ Dana Flanagan-McBeth

Dana Flanagan-McBeth
Tax Counsel

DFM:eb
Rules/05/462.240/346-dfm.doc

cc: Honorable
County Assessor

Mr. David Gau, MIC:63
Ms. Mickie Stuckey, MIC:64
Mr. Dean Kinnee, MIC:64
Mr. Todd Gilman, MIC:70