



STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
TELEPHONE (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

November 7, 2006

Re: Parent – Child Exclusion

Dear Mr. _____ :

This is in response to your October 18, 2005 letter addressed to former Acting Assistant Chief Counsel Selvi Stanislaus in which you requested a legal opinion regarding the property tax consequences of certain transfers involving an irrevocable generation skipping transfer trust (GST). The facts and questions you presented are set forth below.

Background and Facts

1. Upon the death of Grandmother, an irrevocable GST was created for the lifetime benefit of Grandfather. Upon Grandfather's death, Parent, their son, became the lifetime beneficiary of the GST, with a remainder interest in Parent's son, Child.
2. The trust corpus consists of White Acre.
3. The GST contains no sprinkle power.
4. Child is the owner of Black Acre.
5. The GST wants to transfer White Acre to Child in exchange for Child transferring Black Acre to the GST.

Law and Analysis

If the GST transfers White Acre to Child in exchange for Child transferring Black Acre to the GST, will a change in ownership of either or both properties result?

No. The transfer of White Acre from the GST to Child is excluded from change in ownership reassessment under the parent-child exclusion. Additionally, the transfer of Black Acre from Child to the GST is also excluded under the parent-child exclusion.

A "change in ownership" occurs when there is 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. (Rev. & Tax. Code,¹ § 60.) The present beneficiary of an irrevocable trust is considered to be the owner of the trust property. (See Cal. Code Regs. Title 18,² § 462.160, subd. (b).) The creation of a life estate, unless reserved in the transferor or the transferor's spouse, is also a change in ownership at the time of the transfer. (Cal. Code Regs., tit. 18, § 462.060, subd. (a).) A life estate is defined as an estate with a duration limited to the life of a person holding it or limited to the life of some other person. (*Estate of Smythe* (1955) 132 Cal.App.2d 343, 345-346.) Any vesting of the right to possession or enjoyment of a remainder or reversionary interest that occurs upon the termination of a life estate or other similar precedent property interest constitutes a change in ownership. (Rev. & Tax. Code, § 61, subd. (g).)

A life estate interest may also be terminated by the life tenant during his lifetime. (Property Tax Annotation 220.0373.) When, however, a life estate is relinquished to the owner of the remainder interest in a property, the life estate ceases to exist and is merged into what was the remainder interest. The doctrine of merger stands for the proposition that whenever a greater estate (remainder fee interest) and a lesser estate (life estate) in the same parcel of real property are held by the same person, without an intermediate interest or estate, the lesser estate generally merges into the greater estate and is terminated. (See 30 Cal.Jur.3d (1987) Estates, §§ 8 and 22; 4 Miller & Starr, Cal. Real Estate (3rd ed. 2000) § 10.41, pp. 138 and 139.)

Finally, no change in ownership results upon the transfer of a principal residence and \$1 million dollars of the full cash value of other real property between parents and children under specified conditions. (Rev. & Tax. Code, § 63.1, subd. (a).)

In this case, GST is an irrevocable trust. Thus, Parent, the present beneficiary, is the beneficial owner of White Acre. Thus, if Parent transfers his life estate interest in White Acre to Child, the owner of the remainder interest in White Acre, this transfer from Parent to Child terminates Parent's life estate interest in White Acre and causes it to merge into Child's remainder interest. Child's remainder interest in White Acre would become a vested present beneficial ownership interest that he will have received from Parent, not the trustor, Grandmother. This transfer would be excluded from change in ownership reappraisal as a parent-child transfer provided the additional requirements set forth in section 63.1 are met.

As to Black Acre, if Child transfers this property to the GST in which Parent is the beneficial owner of all GST property, the transfer would also be excluded from change in ownership reassessment as a parent-child transfer if all other requirements set forth in section 63.1 are met. Therefore, both transfers would not result in a change in ownership reassessment.

¹ All statutory references are to the Revenue and Taxation Code unless otherwise specified.

² All references to title 18 of the California Code of Regulations are to the Board's Property Tax Rules.

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/ Dana Flanagan-McBeth

Dana Flanagan-McBeth
Tax Counsel

DFM:ljt

Prec/ParentChild/06/05-754.dfm.doc

cc: Honorable
California Assessors' Association

Mr. David Gau	MIC:63
Mr. Dean Kinnee	MIC:64
Ms. Mickie Stuckey	MIC:62
Mr. Todd Gilman	MIC:70