



January 15, 1980

Dear _____:

You have asked several county assessors the same questions concerning trusts. I have been asked to answer the questions by three counties and will answer them in the same order that you asked them.

1. Does it make any difference if the creators of the trust are the trustees, or can an independent trustee be named as trustee in the trust instrument as the titleholder for the trust assets?

Answer: Yes! AB 1489 (Ch. 242 of the Statutes of 1979) excludes trusts (Section 62 (d)) because of the type of trust. There is no limitation as to who may be the trustee.

2. Does it make any difference if the trust is not revocable or amendable?

Answer: Yes! Section 62 (d) excludes from change in ownership property transferred into:

- (1) A revocable trust, and
- (2) An irrevocable trust if the transferor is a present beneficiary of the trust.

If a trust does not meet these qualifications, there will be change in ownership whenever property is transferred into a trust.

3. Is it necessary that the trust instrument contains a provision that the nature of the property as separate property of community property retain its nature as separate or community even though the trustees of the trust will have legal title to the assets?

Answer: No! Section 62 (d) makes no mention of community or separate property. The interspousal exclusion (Section 63) applies to all transfers between spouses whether the property is separate property or community property.

4. The usual situation will involve a trust, which is freely amendable and fully revocable by the S _____. In the case of a husband and wife, a portion of the trust becomes non-amendable and irrevocable upon the death of either of the S _____. Are these provisions required? Will the property, or part of it, be reappraised when one of the S _____ dies?

Answer: Section 61 9g) of the Revenue and Taxation code, added by AB 1488, provides that any interest in real property, which vests on persons other than the trustor (or pursuant to Section 63, his spouse), when a revocable trust becomes irrevocable is a change in ownership. For the portion that vests in the spouse, there will be no change in ownership until he or she dies, but for the other portion, there will be a change in ownership upon the death of the first S _____.

5. One of the trust instruments provides that income from the trust is payable to the children of the S _____ for ten (10) years, and at the end of that time the real

Mr.

January 15, 1986

Page 2

property in the trust reverts back to the S_____. This particular trust is non-amendable and irrevocable during the ten (10) year period. Will a transfer of real property to such a trust trigger a reappraisal? Does it make any difference whether the S_____ and the trustees or an independent trustee is named?

Answer Section 62 (d) excludes from reappraisal creation or termination of a trust in which the trustor retains the reversion and in which the interest of others does not exceed 12 years duration. It makes no difference who the trustee is.

6. What procedures are required by you to establish that the transfer is not one which would trigger reappraisal?

Answer When the assessor becomes aware of a transaction he will usually presume there is a reappraisal event. When no reappraisal should be made, it is up to the taxpayer to notify the assessor of this and give the assessor all backup material to substantiate this position. Section 480 of the Revenue and Taxation Code, added by AB 1438, requires reporting to the assessor of a change in ownership. It is to the taxpayer's advantage to make this report when there is a transfer that would not cause reappraisal.

7. Is it necessary for the trust instrument to be recorded in order to avoid reappraisal?

Answer No! Unless recording is required for validity of the trust, which it isn't, recording is not necessary. The significance of recording is that it alerts the assessor that there has been a transaction. Absence of recording may merely indicate it may take the assessor longer to learn about the existence of the trust. In this case, the assessor can request the change in ownership statement with a penalty applying for non-compliance under Section 482. The change in ownership form has not yet been adopted by the Board of Equalization.

Very truly yours,

Robert D. Milam
Tax Counsel

RDM:fr



(916) 445-3070

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If a trust does not meet these qualifications, there will be a change in ownership whenever property is transferred into a trust.

3. Is it necessary that the trust instrument contains a provision that the nature of the property as separate property or community property retain its nature as separate or community even though the trustees of the trust will have legal title to the assets?

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Answer: No! Section 62(d) makes no mention of community or separate property. The interspousal exclusion (Section 63) applies to all transfers between spouses whether the property is separate property or community property.

4. The usual situation will involve a trust which is freely amendable and fully revocable by the Settlers. In the case of a husband and wife, a portion of the trust becomes non-amendable and irrevocable upon the death of either of the Settlers. Are these provisions required? Will the property, or part of it, be reappraised when one of the Settlers dies?

Answer: Section 61(g) of the Revenue and Taxation Code, added by AB 1438, provides that any interest in real property, which vests on persons other than the trustor (or pursuant to Section 63, his spouse), when a revocable trust becomes irrevocable is a change in ownership. For the portion that vests in the spouse, there will be no change in ownership until he or she dies, but for the other portion, there will be a change in ownership upon the death of the first Settlor.

5. One of the trust instruments provides that income from the trust is payable to the children of the Settlers for ten (10) years, and at the end of that time the real property in the trust reverts back to the Settlers. This particular trust is non-amendable and irrevocable during the ten (10) year period. Will a transfer of real property to such a trust trigger a reappraisal? Does it make any difference whether the Settlers and the trustees or an independent trustee is named?

Answer: Section 62(d) excludes from reappraisal creation or termination of a trust in which the trustor retains the reversion and in which the interest of others does not exceed 12 years duration. It makes no difference who the trustee is.

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Very truly yours,

Robert D. Milan
Tax Counsel

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cc: Mr.
Am.

bc: