



STATE BOARD OF EQUALIZATION

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February 2, 1989

Dear Mr. Neumann:

This is in response to your letter of November 18, 1988, in which you request our opinion regarding the change in ownership consequences of the series of transactions described below.

Husband and Wife owned certain real property as community property at the time of Husband's death in 1976. Husband's one-half interest in the property was distributed to the "Residuary Trust" established under Husband's will. Son and Daughter (of Husband and Wife) are equal beneficiaries of the Residuary Trust.

The terms of the Residuary Trust are that the beneficiaries, Son and Daughter, are to receive up to \$6,000 per year from the net income of that beneficiary's trust until each beneficiary becomes age 35. Any additional income is to be accumulated to principal. When the beneficiaries reach age 35, all of the net income from the trust is to be distributed to those beneficiaries.

When the youngest of Son or Daughter attains age 40, or upon Wife's death, both Son's and Daughter's shares are to be distributed to them.

However, the terms of the Residuary Trust provide that discretionary payments of income and principal from each child's share may be paid to Wife before any distributions are made to Son and Daughter if the net income and principal of the Marital Deduction Trust (discussed below) are insufficient to pay Wife \$35,000 per year. The decision as to whether these payments to Wife are to be made from the Residuary Trust is made by an independent "Consultant."

Wife agreed to have her one-half interest in the community property probated as part of Husband's estate. Her one-half interest in the community property was placed in the Marital Deduction Trust.

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In 1985, Daughter attained age 40. Daughter's and Son's beneficial interest in the Residuary Trust was distributed out to them. Title to their one-half interest in the property is held directly by them.

You have asked if the termination of the Residuary Trust in 1985 resulted in a change in ownership of the interests passing from the Residuary Trust to Son and Daughter. We conclude that a change in ownership did not occur.

ANALYSIS

Section 60 of the Revenue and Taxation Code (all section references contained herein are to the Revenue and Taxation Code) states that:

A "change in ownership" means 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.

Section 61(f) states that a change in ownership includes:

Any vesting of the right to possession or enjoyment of a remainder or reversionary interest which occurs upon the termination of a life estate or other similar precedent property interest, except as provided in subdivision (d) of Section 62 and in Section 63.

Section 62(d) states, however, that a change in ownership shall not include:

Any transfer by the trustor, or by the trustor's spouse, or by both, into a trust for so long as (1) the transferor is the present beneficiary of the trust, or (2) the trust is revocable; or any transfer by a trustee of such a trust described in either clause (1) or (2) back to the trustor; or, any 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.

These statutory provision's have been interpreted by Subdivision (i) of Property Tax Rule 462 which states, in pertinent part:

(1) Creation. Except as is otherwise provided in subdivision (2) the transfer by the trustor, or any other person, of real property into a trust is a change in ownership of such property at the time of the transfer.

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* * *

(3) Termination. Except as is otherwise provided in subdivision (4), the termination of a trust, or portion thereof, constitutes a change in ownership at the time of the termination of the trust.

(4) Exceptions. A transfer resulting from the termination of a trust is not a change in ownership if:

(A) Prior Reappraisal. Termination results in the distribution of trust property according to the terms of the trust to a person or entity who received a present interest (either use of or income from the property) causing a reappraisal when the trust was created or when it became irrevocable; provided, however, another change in ownership also occurs when the remainder or reversionary interest becomes possessory if the holder of that interest is a person or entity other than the present beneficiary.

Under these code and rule provisions, the transfer of assets into a trust and the distribution of assets out of a trust are changes in ownership unless certain exceptions apply. Rule 462(i)(4)(A) states that a transfer resulting from the termination of a trust is not a change in ownership if the property is transferred to persons who received a present interest, causing a reappraisal when the trust was created.

The issue here is did Son and Daughter receive a present interest at the time the trust was created? The facts indicate that Son and Daughter were vested present income beneficiaries of the trust. Until they reached age 35, the income to be distributed to them was a limited amount only with any additional income generated by the trust assets to be added to the principal for their benefit. At a specified point in time, when the youngest of Son and Daughter reached age 40, the trust terminated and their interests were distributed to them.

In contrast, Wife's interest in the Residuary Trust was contingent only. Unlike Son or Daughter, she had no automatic claim to any of the income or principal in the Residuary Trust, but could receive discretionary payments only if the income from her own trust fell below a set amount.

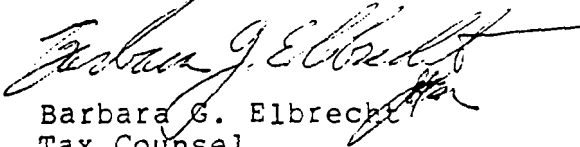
Although it is not altogether free of doubt, we conclude that the creation of Son and Daughter's interest in 1976 resulted in a change in ownership, since they, not Wife, received the present beneficial interest in the assets which were subsequently distributed to them. The exclusion provided by Rule 462(i)(4)(A) applies, since termination results in the

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distribution of trust property to persons who received a present interest when the trust was created. Therefore, the distribution from the trust to Son and Daughter would not result in a change in ownership of the assets distributed to them.

However, the opinion expressed in this letter is advisory only and is not binding upon the assessor in any county. You may wish to consult the appropriate assessor in order to confirm that the described property will be assessed in a manner consistent with the conclusion stated above.

Very truly yours,



Barbara G. Elbrecht
Tax Counsel

BGE:cb
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cc: Hon. John J. Lynch
Los Angeles County Assessor
Mr. John W. Hagerty
Mr. Robert H. Gustafson
Mr. Verne Walton