



STATE BOARD OF EQUALIZATION

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Executive Secretary

February 29, 1988

Dear Mr. :

Re: Trust Agreement Dated December 27, 1962
for C

This is in response to your request that we advise you on whether the following transfer out of a trust will result in a change in ownership.

A trust was created by G and S husband and wife, on December 27, 1962 for the benefit of their daughter, C. The trust was irrevocable by its terms and an undivided one-half interest in a parcel of real property was conveyed to the trustee on that date. The trust agreement provides for distribution of one-third of the principal of the trust estate when the beneficiary attains age 30, one-third at age 35, and the balance of the trust estate at age 40. The beneficiary has now attained age 35 and the trustee is ready to convey two-thirds of the trust estate to her. You ask whether such a conveyance will result in a change in ownership of the real property.

The issues of whether the distribution of real property to the beneficiary on the termination of an irrevocable trust is a change in ownership was decided by the court in Allen v. Sutter County Bd. of Equalization (1983) 139 Cal.App.3d 887. In that case, real property was transferred to an irrevocable trust in 1961. In 1978, the trust terminated and the beneficiary took legal title. The court held that a change in ownership took place in 1961 when the trust was created. (See Board Rule 462(i)(1) which provides that, with certain exceptions not applicable here, a transfer of real property to a trust is a change in ownership.) The court stated at page 890:

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"In 1961 when the trust was created, a 'change in ownership' took place. The trustee received legal title to the property; he subsequently transferred this legal title to the beneficiaries in 1978. However, it is a rudimentary principle of trust law that the creation of a trust divides title--placing legal title in the trustee, and equitable title in the beneficiaries. (Citations omitted.) From 1961 the grandchildren enjoyed equal equitable interests in the property . . . in effect, the only real change in 1978 was in the name of the holder of legal title. The beneficial ownership remained the the same."

It is our opinion that in the present case the property changed ownership on December 27, 1962, when it was transferred to the irrevocable trust. C (now C) has been the beneficial owner of the property since that date. When the property is distributed to her from the trust, she will obtain the legal title also. Such a transfer does not constitute a change in ownership.

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of 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,

Michele F. Hicks
Michele F. Hicks
Tax Counsel

MFH:cb
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cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton