



STATE BOARD OF EQUALIZATION

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March 22, 1990

Mr. Roland E. Giannini
San Mateo County Assessor
County Government Center
Redwood City, CA 94063

Attn: Ms. Shirley Thorne, Exemption Supervisor

Dear Mr. Giannini:

This is in furtherance of our telephone conversation wherein you asked whether a totally disabled veteran entitled to the disabled veterans' residences exemption for his residence would still continue to be entitled thereto if he were to create a revocable trust whereunder his children would hold title to the property as trustees and he or he and his wife would be the beneficiary or beneficiaries thereof. The veteran would still meet all the other requirements for exemption.

As was the case in January of 1976 when you last inquired, we believe that the veteran would continue to be entitled to the exemption under such circumstances. Generally, an express trust is created by a transfer in trust, by which an owner of property transfers it to another as trustee for a beneficiary. In the case of a trust in real property, the trustee takes only bare legal title to the trust property and does not become an owner thereof in the normal sense, whereas the beneficiary acquires an equitable estate in the trust property. We have been of the opinion for many years now that such a beneficiary can be regarded as an owner of the property for purposes of the disabled veterans' residences exemption.

Reservation to the trustor of a total power of revocation is not inconsistent with the establishment of a trust, and it does not prevent the vesting of the trust property in the trustee. The trust remains operative and absolute until the power is exercised.

Finally, whether the veteran is the sole beneficiary or whether both he and his wife are the beneficiaries, the result will be the same in this instance. As you are aware, section 205.5(d)(1) states that "property which is owned by a veteran" includes property owned by the veteran with the veteran's spouse

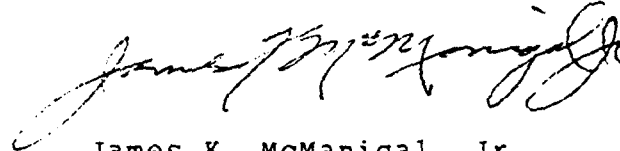
Mr. Roland E. Giannini

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as a joint tenant, tenancy in common or as community property.
And while some of the text of section 205.5 will change in 1991,
subdivision (d)(1) will remain the same.

Very truly yours,



James K. McManigal, Jr.
Tax Counsel

JKM:mw
3163H

cc: Mr. John Hagerty
Mr. Verne Walton
Mr. James Barga
Mr. Bill Minor