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September 23, 2010

**Re: Grandparent/Grandchild Exclusion
 Assignment No.: 10-117**

Dear Mr. _____ :

This is in response to your letter dated May 13, 2010, to Senior Special Property Appraiser _____, wherein you requested our opinion regarding the distribution of trust property to a beneficiary who is the grandchild of the trustor. As explained below, it is our opinion that no reassessment will result provided that a timely grandparent-grandchild exclusion claim is filed.

Factual Background

Your client is administering a family trust that became irrevocable upon the death of the trustor. The sole real property held by the trust was the principal residence of the trustor. The trust provides that upon the death of the trustor the property is to be distributed in equal shares to the trustor's children, T _____ and C _____. In the event a child predeceases the trustor, the trust provides that such child's share shall be distributed to the child's issue by right of representation. C _____ predeceased the trustor and has one surviving child, M _____. You ask whether the interest in the trustor's residence distributed from the trust to M _____ is excluded from reassessment by the grandparent-grandchild exclusion. C _____ transferred no real property to M _____ during his lifetime and C _____ and his ex-wife, N _____, were divorced prior to the death of the trustor.

Law

Revenue and Taxation Code¹, section 60 defines a "change in ownership" as 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 63.1, which implements the parent-child and grandparent-grandchild exclusions, excludes from change in ownership the transfer, between parents and children, of any number of principal residences and the first \$1 million of full cash value of other real property. (Rev. & Tax. Code, § 63.1, subd. (a)(1) and (2).)

¹ All section references are to the Revenue and Taxation Code unless otherwise noted.

In the event a grandchild did not receive a principal residence from his or her deceased parent that was excludable under the parent-child exclusion, the grandchild may receive a principal residence under the grandparent-grandchild exclusion regardless of its value (it will not be subject to the \$1 million exclusion limit). (Rev. & Tax. Code, § 63.1, subd. (a)(3)(B).) However, if a grandchild had previously received an excludable principal residence from his or her deceased parent, the transfer of any dwelling from the grandparent, including the grandparent's principal residence, is considered other real property, which is subject to the deceased parent's \$1 million limitation. (Rev. & Tax. Code, § 63.1, subd. (a)(3)(B).) If the deceased parent had already used his or her \$1 million exclusion, then the grandparent-grandchild exclusion is not available.

The grandparent-grandchild exclusion excludes from change in ownership transfers between a grandparent and grandchild if, among other requirements, all of the parents of that grandchild or those grandchildren who qualify as the children of the grandparents are deceased as of the date of the transfer. (Rev. & Tax. Code, § 63.1, subd. (a)(3).) The terms "parent" and "grandparent" are not specifically defined by statute. Rather, the eligible relationships are defined with respect to the statutory definitions of "children" and "grandchildren." Grandchild or grandchildren is defined as any child or children of the child or children of the grandparent or grandparents. (Rev. & Tax. Code, § 63.1, subd. (c)(4).) "Children" includes any son-in-law or daughter-in-law of the parents; however, this relationship only exists until the divorce of the parent's child to the son- or daughter-in law, or, if that relationship is terminated by death, until the remarriage of the surviving son- or daughter in-law. (Rev. & Tax. Code, § 63.1, subd. (c)(3)(C).)

An eligible parent-child or grandparent-grandchild transfer includes, but is not limited to, any transfer of the present beneficial ownership of property from an eligible transferor to an eligible transferee through the medium of an inter vivos or testamentary trust. (Rev. & Tax. Code, § 63.1, subd. (c)(9).) The creation of a trust involving real property places the legal title in the trustee and the equitable or beneficial title in the beneficiaries. Transfers through the medium of a revocable or irrevocable trust are treated as occurring between individuals, and not between an individual and the trust as an entity. Thus, if the requirements of section 63.1 are otherwise satisfied, transfers to and from a trust are eligible for the parent-child and grandparent-grandchild exclusions.

Analysis

By the terms of the trust, T and M each received a 50 percent interest in the trustor's residence from the trustor. The effective date of these transfers was the date of death of the trustor since beneficial interest passed on that date. (Property Tax Rule² 462.260, subd. (d)(1).) Absent an exclusion, these transfers constituted changes in ownership of the interests in the residence. Since T was the child of the trustor, the parent-child exclusion may apply to the transfer of her 50 percent interest in the residence if all the requirements of section 63.1 are met.

As to the 50 interest in the residence received by M, it appears that the grandparent-grandchild exclusion applies. As explained above, section 63.1 excludes certain transfers between grandparents and their grandchildren from change in ownership if all children of the

² References to "Property Tax Rules" or "Rules" are section references to title 18 of the California Code of Regulations.

grandparents who qualify as parents of the grandchildren are deceased. In this case, M's father, C, is deceased, but his mother, N, is not. As a daughter-in-law of the trustor, she was considered the trustor's "child" for purposes of section 63.1. However, this relationship only existed until C and N's divorce. (Rev. & Tax. Code, § 63.1, subd. (c)(3)(C).) After the divorce, the only person who qualified both as child of the trustor and parent of M was C. As C was deceased at the time of the trustor's death, the grandparent-grandchild exclusion may apply to the trustor's transfer to M.

As explained above, the grandparent-grandchild exclusion is an extension of the parent-child exclusion. As such, the application of the exclusion will depend on whether and to what extent the parent, C, previously transferred property to his child, M. Since C transferred no property to M during his life or upon his death that was excluded from change in ownership under section 63.1, the trustor may transfer a principal residence of any value to M as well as \$1 million in other real property. (Rev. & Tax. Code, § 63.1, subd. (a)(3)(B).) Therefore, the transfer of the 50 percent interest in the trustor's principal residence to M will not be reassessed provided that a grandparent-grandchild exclusion claim is timely filed and all other requirements are met.

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/ Daniel Paul

Daniel Paul
Tax Counsel

DP:yg

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cc: Mr. David Gau MIC:63
Mr. Dean Kinnee MIC:64
Mr. Todd Gilman MIC:70