



STATE BOARD OF EQUALIZATION

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March 29, 2006

***Re: Irrevocable Trust – Parent/Child One Million Dollar Exclusion***

Dear Ms. \_\_\_\_\_ :

This is in response to your November 1, 2005 e-mail to the Board’s Property Tax Web site, and our subsequent telephone conversations. You have requested a written opinion regarding the application of the parent-child exclusion and the one million-dollar limit to the following transaction involving an irrevocable trust:

1. Wife dies and her interest in certain properties are transferred to an irrevocable trust. The trust provides for her husband to receive benefits for life, and their children hold the remainder interests. Husband’s interest in the properties is allocated to a revocable trust. Preliminary Change in Ownership Reports (PCOR’s) are filed on the transfer to the wife’s irrevocable trust. The transfer is claimed as an exempt interspousal transfer.
2. Husband dies, his revocable trust becomes irrevocable, and the trust assets pass to their children. PCOR’s are filed and the parent-child exclusion is claimed for the first one million dollars of “other property.” (No principal residence.)

At issue is the property transferred from wife’s irrevocable trust to her children upon her husband’s death. You specifically ask “who is considered the transferor of such property?”

For the reasons discussed below, the wife is the transferor. As an eligible transferor her transfers will qualify for a separate one million dollar exclusion.

**Law and Analysis**

Proposition 58 added subdivision (h) to section 2 of article XIII A of the California Constitution. Briefly, subdivision (h) provides that the terms “purchased” and “change in ownership” exclude the purchase or transfer of (1) the principal residence between parents and their children, and (2) the first one million dollars of the full cash value of all real property other than a principal residence between parents and children. Section 63.1 was added to the Revenue and Taxation Code to implement the parent-child exclusion provisions of Proposition 58. To qualify for this exclusion, the purchase or transfer must be from an eligible transferor to an eligible transferee and qualify in each case under the implementing provisions of section 63.1.

Both the language and intent of subdivision (b) (2) of section 63.1 allow a full one million dollar exclusion to each eligible transferor who has an ownership interest in property. In this case, the wife transferred a life estate to her husband with a remainder to her children. Upon the termination of the life estate, the wife is deemed the grantor of the remainder estate. Since the wife is considered the transferor of the property that was the subject of the life estate, her one million dollar exclusion is available when the irrevocable trust for husband's benefit terminates. (See Property Tax Annotation No. 625.0120, enclosed.)

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.

Very truly yours,

/s/ Shirley Johnson

Shirley Johnson  
Tax Counsel

SJJ:jlh

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cc: Honorable Rick Auerbach  
California Assessors' Association

Mr. David Gau, MIC:63  
Mr. Dean Kinnee, MIC:64  
Ms. Mickie Stuckey, MIC:62  
Mr. Todd Gilman, MIC:70