



STATE BOARD OF EQUALIZATION
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Executive Director

February 21, 1989

Mr. B.

Dear Mr. B

Re: Request for Proposition 58 Opinion

This is in response to your letter of January 25, 1989 to the legal staff of the State Board of Equalization wherein you request our opinion as to whether the transfers proposed in your letter and set forth below will be excluded from change in ownership under Revenue and Taxation Code section 63.1.

The instant property was purchased by father and mother in 1964. Father died in 1976 leaving by his will a testamentary Trust B and, pursuant to the Will, his spouse created Trust A. One-half of the instant property was put into each Trust. Trust B was irrevocable. It provided that the spouse would have a life estate therein and upon her death, all property therein would pass to the two remaindermen equally, the natural daughter and the natural son of the deceased father and his spouse. The mother's Trust made similar provisions in Trust A regarding transfers upon her death.

The mother died in March, 1988. One-half of the instant property is still held by each of the two Trusts, A and B. The Trustees plan to distribute, pursuant to their trust powers, each one-half to the daughter, the son taking other property of the trusts in lieu thereof. The contemplated transfers will be in late January or in February, 1989.

The instant property was not the principal residence of either decedent but the "full cash value" of the instant property on the Assessor's rolls does not exceed \$1,000,000. Also, no other real property of the decedents has been sold or transferred to an eligible transferee and no other Proposition 58 claims have been made or are contemplated.

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As you know, Proposition 58 amended article XIII A of the California Constitution to provide among other things that the terms "purchased" and "change in ownership" do not include the purchase or transfer of the principal residence and the first \$1 million of the full cash value of other real property between parents and children. Chapter 48 of the Statutes of 1987 (AB 47) is the implementing legislation for Proposition 58. Chapter 48 added section 63.1 to the Revenue and Taxation Code and applied to purchases and transfers of real property completed on or after November 6, 1986.

Neither Proposition 58 nor section 63.1 as originally enacted addressed transfers through the medium of a trust. Section 63.1 was recently amended, however, to provide that for purposes of the parent-child exclusion, "'transfer' includes . . . 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." Chapter 700 of the Statutes of 1988 (SB 1736).

Even before that amendment, however, we had taken the position that Proposition 58 and section 63.1 were applicable to transfers through the medium of a trust if the requirements of those provisions were otherwise satisfied. Our rationale for that position was that when a trust is created, the beneficial ownership of property passes from the trustor (or decedent) to the trust beneficiaries and the legal title passes to the trustee. (Estate of Feuereisen (1971) Cal.App.3d 717, 720; Allen v. Sutter County Board of Equalization (1983) 139 Cal.App.3d 887, 890.)

Thus, under our view, the children in this matter received an equitable remainder equally in an undivided one-half of the property from their father at his death in 1976 and an equitable remainder equally in an undivided one-half of the property from their mother when she transferred it into trust shortly after their father's death. When the mother died in 1988, the equitable remainders of the children became possessory. At that time each child beneficially owned an undivided one-half interest in the real property half of which came from each parent. Although such vesting of the right to possession or enjoyment of a remainder interest which occurs upon the termination of a life estate or other similar precedent property interest is a change in ownership under section 61(f) subject to specified exceptions not here applicable, we have taken the position that section 63.1 is applicable to exclude such transfers from change in ownership where the trustors and beneficiaries are parents and children. The vesting of the right to possession in each child of a one-half interest in the real property as a result of the

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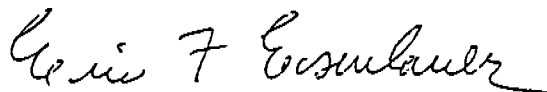
termination of the mother's life estate would therefore be excluded from change in ownership.

It appears to us, however, that transferring all the real property to the daughter as proposed here is a transfer between parent and child only as to half of the real property and the other half is in reality a transfer from brother to sister. Thus, under the facts presented, we are of the opinion that the proposed transfer will result in a change in ownership as to 50 percent of the real property in question.

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.

If we can be of further assistance in this matter, please let us know.

Very truly yours,



Eric F. Eisenlauer
Tax Counsel

EFE:cb
1831D

cc: Mr. John W. Hagerty
Mr. Robert H. Gustafson
Mr. Verne Walton

RECEIVED

FEB 21 1989

Division of Assessment Standards
SACRAMENTO