



220.0763

(916) 445-4588

July 9, 1982

Deputy County Counsel
San Luis Obispo County
Courthouse Annex, Room 103
San Luis Obispo, CA 93408

Dear Mr. [redacted]

The other day you asked whether the recent amendment to Section 462(i)(2)(A) is applicable to transfers that occur on or after March 1, 1975.

Although the section was amended in 1982, this amendment was not made because of a recent change in the law. The purpose of the amendment was to remove any possible ambiguity as to what interests were subject to reappraisal if the trustor or the trustor's spouse was not the sole present beneficiary(s).

As you are aware, a rule cannot change the meaning of a statute if it is clear and unambiguous. In this regard, it should be kept in mind Section 60 of the Revenue and Taxation Code sets forth the basic definition as to what constitutes a "change in ownership." It provides:

A "change in ownership" means 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.

This general definition is controlling in all cases where a more specific provision to the contrary is absent. In keeping this general concept in mind the Legislature also enacted, in 1979, Sections 62(d) and 63(a) which excluded from change in ownership, property transferred to a trust where the trustor or the trustor's spouse were the beneficiaries. These amendments were specifically made applicable to transfers occurring on or after March 1, 1975. In such a case the only present beneficiaries (per Section 60) were the trustor or the trustor's spouse.

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There is nothing in the amended sections indicating that if there are other present beneficiaries, their interests are not subject to reappraisal merely because the trustor or the trustor's spouse is also one of the present beneficiaries. Such a conclusion would not only be contra to the clear language of Section 60 relating to transfers of present beneficial interests, it could also cause an unwarranted and unintended result. For instance the trustor could retain one tenth of one percent interest in the trust and the other interests could be transferred to an unrelated party. Under the theory that he is a present beneficiary no reappraisal would be made even though there are different people now owning the bulk of property interests.

If the Legislature wanted to exclude transfers to trusts from reappraisals if the trustor or the trustor's spouse was one of the present beneficiaries, they could have easily done so. Since the Legislature did not do so, it would be presumptuous on our part to do so; especially in light of the wording of Section 60.

Whether a particular county, or for that matter, the State Board of Equalization had erroneously concluded that so long as the transferor or the transferor's spouse was one of the present beneficiaries there should not be a reappraisal of the present interest held by other beneficiaries is immaterial. It is clear that a government agency has no authority to change the clear meaning of a statute, whether it is attempted by letter or a formal rule.

Summarily, it is our opinion that the conclusions of Rule 462(i)(2)(A) are applicable to any transactions occurring on and after March 1, 1975.

Very truly yours,

Glenn L. Rigby
Assistant Chief Counsel

GLR:jlh

bc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Legal Section