



STATE BOARD OF EQUALIZATION

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Executive Director

December 13, 1989

Dear Mr. . . . :

This is in response to your letter of October 18, 1989 to the State Board of Equalization in which you request our opinion with respect to the following facts set forth in your letter:

In 1981 a decedent established an irrevocable trust for his three children through his will. The principal asset in the trust was a parcel of approximately three acres. Under the terms of the trust, each of his three children is to receive a specific part of the parcel.

Under applicable zoning laws in order to distribute the separate portions of the three acres to each of the three children, it will be necessary to file a parcel map or subdivision map dividing the three acres into three separate one acre parcels.

Your first question is whether the recording of the map dividing the three acres into three one acre parcels prior to the termination of the trust will trigger a reappraisal of the property, and whether the subsequent distribution of the three individual lots by the trust pursuant to its terms will cause a revaluation of the property or whether the distribution will be exempt under Rule 462(i)(4)(A).

Property Tax Rule 462(i) provides in relevant part:

* * *

(3) Termination. Except as is otherwise provided in subdivision (4), the termination of a trust, or portion thereof, constitutes a change in ownership at the time of the termination of the trust.

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(4) Exceptions. A transfer resulting from the termination of a trust is not a change in ownership of:

(A) Prior Reappraisal. Termination results in the distribution of trust property according to the terms of the trust to a person or entity who received a present interest (either use of or income from the property) causing a reappraisal when the trust was created or when it became irrevocable; provided, however, another change in ownership also occurs when the remainder or reversionary interest becomes possessory if the holder of that interest is a person or entity other than the present beneficiary.

* * *

(E) Proportional Interests. Termination results in the transfer to the beneficiaries who receive the same proportional interests in the property as they held before the termination of the trust.

If the children of the decedent received a present interest (either use or income from the property) when decedent died in 1981 resulting in a change in ownership at that time and if distribution of the property as three separate one-acre parcels is according to the terms of the trust, such distribution would not constitute a change in ownership as provided by Rule 462(i)(4)(A). Similarly, such distribution would also be excluded from change in ownership under Rule 462(i)(4)(E). See also Allen v. Sutter County Board of Equalization (1983) 139 Cal.App. 3d 887.

Moreover, we previously have taken the position that the filing of a subdivision map for division of property into separate parcels is not, by itself, a change in ownership. Further, we see no basis for concluding that such action would constitute a change in ownership in this case where such division is for the purpose of carrying out the express terms of the trust.

You also ask alternatively whether if no map is recorded and the property is distributed in 1/3 interests to the three children would such distribution be excluded from change in ownership under Rule 462(i)(4)(A).

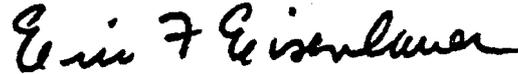
Since distribution of the property in 1/3 interests is not according to the terms of the trust as required by Rule 462(i)(4)(A), we are of the opinion that such a distribution would probably not be excluded under that provision. However, if each specific part of the parcel which each child was to receive under the terms of the trust was of equal size and value, the distribution of the property equally as tenants in

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common would, in our opinion, be excluded under Rule 462(i)(4)(E).

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,



Eric F. Eisenlauer
Tax Counsel

EFE:cb
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cc: Mr. John W. Hagerty
Mr. Verne Walton