STATE OF CALIFORNIA

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STATE BOARD OF EQUALIZATION
LEGAL DIVISION (MIC:82)
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January 22, 1999

, Esq.
Law Office

Re: Withdrawal of Opinion Letter of November 5, 1998
Application of Rev. & Tax. Code section 69.5

Dear Mrs. :

Reference is made to our letter of November 5, 1998, responding to your October 9, 1998 letter, in which you requested a legal opinion as to the availability of the base year value transfer benefit of section 69.5 of the Revenue and Taxation Code when the subject residences were held in trust.

In our prior letter, we concluded that the base year value transfer benefit of section 69.5 was not available for residences held in trust. Upon further consideration, we have determined that residences held in trust should not be ineligible solely on that basis and, therefore, this letter supersedes the November 5, 1998 letter. Accordingly, in our view, your client would not be disqualified under the provisions of section 69.5 merely because the residence is held in trust.

Your client and her husband had transferred their residence into a revocable trust in which they were the trustees and beneficiaries. Your client's husband subsequently died. Upon the death of one spouse, the trust instrument provide for a division of the property into two trusts, although the division has not been made. Your client is the sole trustee and sole beneficiary of the trust, and when this division is made, your client will be the sole trustee and the sole beneficiary of each of those trusts. Your client, in her capacity as trustee, proposes to sell her residence held in trust and transfer the base year value to a replacement dwelling which will be purchased and held in trust. Under these circumstances, you asked, "does she lose the ability to transfer the base year value if the transactions are carried out by her as Trustee of the trust in which she has all the beneficial ownership for her lifetime?"

<u>Law and Analysis</u>

The general provisions of Section 69.5 are set forth in subparagraph (a)(1) which, for purposes of this discussion, make available base year value transfer relief to "any person over the age of 55 years, or any severely and permanently disabled person, who resides in property that is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 . . . , subject to the conditions and limitations provided in this section . . ."

For purposes of section 69.5, subdivision (g) provides specific definitions of the terms used. Subpart (1) of subdivision (g) defines "person over the age of 55 years" as "any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of original property." Subpart (9) defines "claimant" as "any person claiming the property tax relief provided by this section." Subpart (13) further defines "person" as meaning "any individual, but does not include any firm, partnership, association, corporation, company, or other legal entity or organization of any kind."

Previously, we proceeded from the premise that the trust would be considered the claimant and would not qualify under the definitions provided in subparts (9) and (13) of subdivision (g): the subpart (13) definition of "person" as an "individual" necessarily excludes a trust from that definition. Therefore, a trust is not considered an eligible claimant within the meaning of section 69.5. However, for purposes of change in ownership, we have long-held that the beneficiary of a trust is the property owner;[1] therefore, an individual who is the sole beneficiary of a trust should be considered the claimant for purposes of section 69.5. Thus, because your client, the beneficiary of the trust, is a "person" under the subpart (13) definition, subparts (9) and (13) are not a bar to the availability of the base year value transfer benefit of section 69.5.

Additional portions of section 69.5 cited in support of the conclusion that the base year value transfer benefit was not available for residences held in trust were subpart (4) of subdivision (g) and subpart (1) of subdivision (f). As to the former, your client being the claimant for purposes of section 69.5 eliminates it as a bar to the availability of the section. As to the latter, provision, your client being the claimant and possessing a social security number would eliminate subpart (1) of subdivision (f) as a bar to the availability of the section.

In sum, in our view, an individual holding a residence in trust should be considered the claimant for purposes of section 69.5 and should receive the base year value transfer benefit of the section, assuming all of the requirements of the section are met. We apologize for any inconvenience that may have been caused by our prior letter.

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[1] The exception is the Massachussetts or Business Trust, which is regarded as a legal entity.

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,

Louis Ambrose
Tax Counsel

LA:cl/lg

cc: Honorable
County Assessor/Recorder

Honorable
County Assessor

Mr. Richard C. Johnson (
Mr. David J. Gau (
Ms. Jennifer L. Willis (

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