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September 14, 2007

Honorable Stephen L. Vagnini
Monterey County Assessor
168 West Alisal Street, Floor 1
P.O. Box 570
Salinas, CA 93902-0570

Re: *Change in Ownership – Custodianship (APN*

Dear Mr. Vagnini:

This is in response to your correspondence, forwarded on April 4, 2007, to Trecia Nienow, Acting Supervising Tax Counsel, by Mr. Dean Kinnee, Chief, County-Assessed Properties Division, in which you requested a legal opinion regarding the change in ownership treatment of a transfer of an interest in real property from a grandmother to her daughter as a custodian for her grandson under the California Uniform Transfers to Minors Act (CUTMA), and whether any exclusions from change in ownership would apply under the circumstances. For the reasons set forth below, we conclude that: (1) the identity of a custodian under the CUTMA should be disregarded, as would the identity of a trustee of a trust, and the grandson should be treated as the transferee; and (2) there is no exclusion from change in ownership for the transfer you describe because the property should be treated as transferred from the grandmother to the grandson, and not from the grandmother to the daughter in a manner that would qualify for the parent-child exclusion.

Factual Background

You have provided a grant deed, dated August 3, 2006, which provides that:

FOR HER NATURAL LOVE AND AFFECTION FOR HER GRANDSON, D B , also known as , a married woman, hereby grants to A V , as custodian for H V , a minor, under the California Uniform Transfers to Minors Act[,], an undivided six percent (6%) interest in [Property].

Mr. Kinnee informed us that Mrs. B (grandmother) is the mother of Ms. V (mother), and the grandmother of H V (grandson), and that the grandson was a minor (six years old) at the time the interest in real property was transferred. Mr. Kinnee

also forwarded us your questions as to whether the transfer represented by the deed constitutes a change in ownership or whether an exclusion from change in ownership applies.

Law and Analysis

Parent-Child and Grandparent-Grandchild Exclusions

As you know, a “change in ownership” is defined as 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. (Rev. & Tax. Code, § 60.) Section¹ 63.1 of the Revenue and Taxation Code, which implements the parent-child and grandparent-grandchild exclusions, excludes from change in ownership the transfer, between parents and children, of any number of principal residences and the first \$1 million of full cash value of other real property. (Rev. & Tax. Code, § 63.1, subd. (a)(1) and (2).)

The grandparent-grandchild exclusion excludes from change in ownership transfers between a grandparent and grandchild if, among other requirements, all of the parents of that grandchild or those grandchildren who qualify as the children of the grandparents are deceased as of the date of the transfer.² (Rev. & Tax. Code, § 63.1, subd. (a)(3).) The terms “parent” and “grandparent” are not specifically defined by statute.³ Rather, the eligible relationships are defined with respect to the statutory definitions of “children” and “grandchildren.” Grandchild or grandchildren is defined as any child or children of the child or children of the grandparent or grandparents. (Rev. & Tax. Code, § 63.1, subd. (c)(4).) For purposes of this opinion, we assume that the relationships are as stated above.

An eligible parent-child or grandparent-grandchild transfer includes, but is not limited to, 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. (Rev. & Tax. Code, § 63.1, subd. (c)(9).) The creation of a trust involving real property places the legal title in the trustee and the equitable or beneficial title in the beneficiaries. Transfers through the medium of a revocable or irrevocable trust are treated as occurring between individuals, and not between an individual and the trust as an entity. Thus, if the requirements of section 63.1 are otherwise satisfied, transfers to and from a trust are eligible for the parent-child and grandparent-grandchild exclusions.

¹ All subsequent “section” references are references to the Revenue and Taxation Code, unless otherwise indicated.

² Commencing on the lien date of the 2006-2007 fiscal year, a son-in-law or daughter-in-law of the grandparent that is a stepparent to the grandchild need not be deceased on the date of the transfer. (Rev. & Tax. Code, § 63.1, subd. (a)(3).)

³ Subdivision (h) of section 2 of article XIII A of the California Constitution delegates to the Legislature the task of defining the terms “parent,” “child,” “grandparent,” and “grandchild.”

Transfers Involving Trusts

Property Tax Rule⁴ 462.160 provides that the transfer of real property to an irrevocable trust is a change in ownership of such property at the time of the transfer unless all the beneficiaries qualify for an exclusion from change in ownership. (Rule 462.160, subs. (a) and (b).) This is because it is necessary to “look through the trust” (i.e., disregard the identity of the trustee) to determine the parties between whom a transfer is taking place for change in ownership purposes – generally, the trustor and the present beneficiary of the trust.

California Uniform Transfers to Minors Act (CUTMA)

Under California law, a minor may own real property or an interest therein (*Estate of Yano* (1922) 188 Cal. 645, 649), but a minor may not convey or make contracts relating to real property. (Fam. Code, § 6701, subd. (b).) Therefore, a minor cannot sell or purchase property held directly in his or her own name, and, as a practical matter, transactions involving minor’s interests in real property are usually conducted indirectly, through a guardianship or trust. The California Uniform Transfers to Minors Act (Prob. Code § 3900 et seq.) (CUTMA) provides a statutory mechanism for transferring property to an adult “custodian” for the benefit of a minor.⁵

Under CUTMA, "custodial property" means: (1) any interest in property transferred to a custodian under CUTMA; and (2) the income from and proceeds of that interest in property. (Prob. Code, § 3901, subd. (f).) Custodial property can be created in several ways, including by recording a deed naming the custodian to receive real property on behalf of a minor followed by substantially the following language: "as custodian for _____ (Name of Minor) under the California Uniform Transfers to Minors Act." (Prob. Code, § 3903, subd. (a).) When such a transfer creates custodial property, the minor becomes the indefeasibly-vested owner of the property (i.e., the transfer is irrevocable). (Prob. Code, § 3911, subd. (b).) However, the CUTMA custodian, when acting in a custodial capacity, “has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, but a custodian may only exercise those rights, powers, and authority in that capacity only.” (Prob. Code, § 3913, subd. (a).) A CUTMA custodian must hold, control, manage, and invest the custodial property, and record title if appropriate (Prob. Code, § 3912, subd. (a)); and as a general rule, a custodian is held to the standard of care of a “prudent person dealing with property of another” (Prob. Code, § 3912, subd. (b)). Title to custodial property must be transferred to the minor or the minor’s estate when the custodianship terminates, and, in the absence of any specific provisions delaying the termination, a custodianship terminates when the minor reaches the age of 18 years or the minor dies. (Prob. Code, § 3920.) In sum, the custodian has no beneficial interest in the property, but has powers akin to that of a trustee. (13 Witkin, Summary of Cal. Law (10th ed. 2005) Personal Property, § 142, p. 154.)

⁴ All references to Property Tax Rules or Rules are to the California Code of Regulations title 18.

⁵ CUTMA provides a simple and inexpensive method of making and administering a gift to a minor. (13 Witkin, Summary of Cal. Law (10th ed. 2005) Personal Property, § 140, p. 152.)

Analysis of Deed

When property is transferred to a minor's custodian under the CUTMA, a minor has actual as well as beneficial ownership of the property, and the custodian only has legal title with powers and limitations similar to that of a trustee of a trust. Therefore, for property tax purposes, the assessor should treat a CUTMA custodianship in the same manner as a trust, i.e., the assessor should "look through" the custodianship in the same manner as the assessor would "look through" a trust to identify the transferor and beneficial recipient of the transferred property. This means that a CUTMA custodian should not be considered a beneficial owner, either as a transferor or transferee.

The deed provided indicates that a valid transfer to a CUTMA custodian was made by the minor's grandmother. The deed therefore irrevocably grants a beneficial interest in six percent of the real property to the minor, with no beneficial interest transferred to the custodian. The transfer for property tax purposes is therefore from the grandmother to the grandchild. However, as the mother of the grandchild is evidently living, the grandparent-grandchild exclusion is not applicable. We further note that because the grandchild is the beneficial owner of the transferred interest in real property, the subsequent conveyance of that interest from the CUTMA custodian to the grandchild (on reaching the age of majority) or to the grandchild's estate (in the event of the grandchild's death while still a minor) would be excluded from reappraisal.

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.

Sincerely,

/s/ Carole Ruwart

Carole Ruwart
Senior Tax Counsel

CR:pb

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cc: Mr. David Gau MIC:63
Mr. Dean Kinnee MIC:64
Mr. Todd Gilman MIC:70