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From: Schultz, Glenna <Glenna.Schultz@boe.ca.gov>  
Sent: Monday, December 16, 2019 4:22 PM

Subject: RE: [External]2 More Questions on Equalizing Distributions  
Good afternoon,

Here are the responses to your questions that I just received from our Legal Department.

**Question 1:** *A workaround being used in the field starts with the acquiring beneficiary creating an LLC or corporation. The acquiring beneficiary funds the entity with the money needed to equalize the distribution of the estate / trust and then acts as the 3<sup>rd</sup> party lender. Is any percentage of ownership by the acquiring beneficiary in an entity acting as a 3<sup>rd</sup> party lender to the estate / trust permissible?*

For the first question, if the sole purpose of the legal entity is for equalizing the estate, and the acquiring beneficiary is involved, whether by ownership or otherwise, it shouldn't qualify, because it's basically a sham transaction; the legal entity may essentially be a shell or alter ego of the individual, created for tax evasion purposes.

**Question 2:** *The second question relates to equal distributions and qualifying for reassessment exclusion. It was brought to my attention yesterday that an estate or trust does not have to be distributed equally in order to qualify for an assessment exclusion as long as the acquiring beneficiary's equity in the property does not exceed the distributions to the other heirs / beneficiaries. For example; There are two children beneficiaries of a trust. Sibling A receives a property with equity of \$400,000 plus a classic car valued at \$100,000. Sibling B receives \$400,000 in cash. Would this distribution scenario permit Sibling A to receive a full assessment exclusion?*

For the second question, the context of equalizing distributions assumes that the terms of the trust state that the children are to receive the trust assets on a share and share alike basis from the parents, and the trustee has the power to distribute the property on a pro rata or non-pro rata basis. A distribution worth \$500K to one sibling and \$400K to another would not adhere to the terms of the trust.

I hope this is helpful.

## Glenna Schultz

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Sent: Friday, October 4, 2019 7:34 AM  
To: Schultz, Glenna <Glenna.Schultz@boe.ca.gov>  
Subject: [External]2 More Questions on Equalizing Distributions

Glenna,

Two more questions came up regarding the need to equalize distributions of estates / trusts when one is filing a Claim for Reassessment Exclusion. In situations when an estate or trust does not have enough liquid assets to make an even distribution to all of the heirs / beneficiaries, it has been our understanding that an estate / trust can obtain a 3<sup>rd</sup> party loan to equalize the distribution in order to qualify for a full reassessment exclusion. We understand that the 3<sup>rd</sup> party can be anyone that is not the acquiring heir / beneficiary.

A workaround being used in the field starts with the acquiring beneficiary creating an LLC or corporation. The acquiring beneficiary funds the entity with the money needed to equalize the distribution of the estate / trust and then acts as the 3<sup>rd</sup> party lender. This is obviously a strategy to circumvent Revenue and Taxation Code 63.1. The question is.....

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Is any percentage of ownership by the acquiring beneficiary in an entity acting as a 3<sup>rd</sup> party lender to the estate / trust permissible?

The second question relates to equal distributions and qualifying for reassessment exclusion. It was brought to my attention yesterday that an estate or trust does not have to be distributed equally in order to qualify for an assessment exclusion as long as the acquiring beneficiary's equity in the property does not exceed the distributions to the other heirs / beneficiaries. For example; There are two children beneficiaries of a trust. Sibling A receives a property with equity of \$400,000 plus a classic car valued at \$100,000. Sibling B receives \$400,000 in cash. Would this distribution scenario permit Sibling A to receive a full assessment exclusion?

I always appreciate your time and effort.