

CHECKLIST FOR TRUST REVIEW REASSESSMENT PROBLEMS

(Short Form)

Caution: Make sure no property tax reporting is done before analysis is complete – no PCOR (that means no Affidavits or deeds recorded), no Preliminary Change in Ownership Report – Death of Real Property Owner, no Change in Ownership Report, no P/C or GP/GC claims are filed (the exclusion is applied against claims in the order filed, so the earliest filing date gets the priority), and no other representations to the Assessor about the terms of the trust or beneficiaries/heirs are made.

Things to note and not miss:

1. If this is a revocable trust, the person holding the power to revoke is deemed the sole present beneficiary of the trust for property tax (and Probate Code) purposes.
2. If there are any general powers of appointment (can appoint to him/her self or to his/her estate) – be sure to check the trust GST provisions for powers of appointment – the person holding the general power is also deemed the sole present beneficiary of the trust for property tax (and Probate Code) purposes.
3. Is this a family trust upon the death of the surviving spouse? If so, be sure to fill out property tax forms (including parent/child claims) which show the first spouse to die as the only transferor of the trusts holding the property of the first spouse to die, i.e., typically the bypass and QTIP trusts. The surviving spouse is the only transferor of the survivor's trust, but is not a transferor of the Bypass and QTIP trusts (the deceased spouse is).

Things to review trust instrument for – because any of these might be a problem and the trust need to be analyzed further:

4. Are there sprinkling powers? I.e., for the trust or any of the sub-trusts, does the trustee have the ability to distribute income or principle to a group or class of persons other than the named beneficiary?
5. Does the trust give one person exclusive use of a property, e.g., right to reside? Check the Trustee Powers Article also. Does any beneficiary in fact reside in of the trust properties?
6. Are there conditions to meet before beneficiary can receives his/her interest under the trust?
7. Are there conditions to meet for the beneficiary to keep on receiving his/her interest under the trust into the future?
8. Does the trust have any provisions for a spouse's or beneficiary's right to withdraw trust corpus? E.g., \$5,000 or 5%?
9. Is this an IDGT where the settlor has the power to substitute other assets?
10. Does the trust own an interest in a legal entity which owns CA real property?