

**Amend Revenue and Taxation Code (RTC) Section 62 to exclude from change in ownership a family farm homestead that has been the continuous home of a child but ineligible for the parent-child exclusion (Proposition 58) after the parent's death due to the complex structure of California property tax law.**

**Source: Honorable Fiona Ma**

**Existing Law.** Generally, the parent-child change in ownership exclusion does not apply to transfers of interests in legal entities.<sup>1</sup> However, the law<sup>2</sup> provides three exceptions for certain resident-owned legal entities. These are:

- Cooperative housing corporations (i.e., co-ops)
- Resident-owned mobilehome parks
- Resident-owned floating home marinas

The exclusion applies to (1) a principal residence and (2) the first \$1 million dollars of full cash value of all other real property.

Because the exclusion does not apply to transfers of an interest in a legal entity (except for the above exceptions), the Legislature included uncodified legislative intent language that the parent-child change in ownership provision of law<sup>3</sup> be liberally construed to carry out the purpose of Proposition 58 in this regard.

Relevant to this proposal, the [Ballot Pamphlet](#) arguments for Proposition 58 presented to voters stated that it would protect property transfers within the family as well as noting that family farms are sometimes threatened by the death of a parent. Furthermore, the Proposition specified that it would apply to principal residences.

Different laws apply to legal entity ownership interest transfers. These other laws<sup>4</sup> can prevent the parent-child exclusion from applying to a family farm homestead that includes a principal residence if the parents placed it into a corporation after they bought it and subsequently die. Thus, under this fact pattern, a family farm that includes the principal residence when passed down to the children after the parent's death will be reassessed to its current market value, despite Proposition 58. The layers of complexity in change in ownership law prevent the intended benefit to the children described in the ballot pamphlet.

**This Proposal.** This proposal amends RTC Section 62 to exclude from change in ownership a parent to child transfer of stock in an eligible corporation that owns eligible property provided the transfer is due to the death of a parent or parents. This benefit is parallel to the benefit of Section 63.1's parent child change in ownership exclusion and is consistent with the arguments made in the Proposition 58 ballot pamphlet to protect family farms upon death of a parent.

This proposal provides a similar legal entity exception as Section 63.1 provides for the three other situations where a principal residence is involved. The eligibility provisions are narrow in scope to be consistent with a small family farm homestead that is limited to \$1 million full cash value as provided in Proposition 58.

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<sup>1</sup> Parents and children must transfer real property, not an interest in a legal entity.

<sup>2</sup> RTC [Section 63.1\(c\)\(8\)](#).

<sup>3</sup> RTC Section 63.1.

<sup>4</sup> RTC [Section 62\(a\)\(2\)](#) and [Section 64\(d\)](#)

This proposal also allows the reversal of the reassessment of a small family homestead that has been the child's continuous place of residence, which would otherwise qualify in this limited instance on a prospective basis.

Given the proposal's narrow scope, the revenue consequences are estimated to be minimal, about \$5,000 annually.

**Background.** In 2016, the California Farm Bureau and an affected taxpayer sought assistance from the Board of Equalization during its Property Taxpayer Rights Advocate hearing related to a small family farm that had been reassessed from its initial Proposition 13 value to its 2014 market value. In this case, the family farm homestead had been transferred from the parents into a corporation wholly owned by the parents in 1982, shortly after Proposition 13 was enacted but before enactment of Proposition 58. Because of the layers of complexity in the California property tax structure, the sequencing of events resulted in a reassessment of the family farm homestead upon the death of the last living parent, and the family home continues to be a principal residence of the parent's child.

*Section 62 of the Revenue and Taxation Code is amended to read:*

62. Change in ownership shall not include:

(a) (1) Any transfer between coowners that results in a change in the method of holding title to the real property transferred without changing the proportional interests of the coowners in that real property, such as a partition of a tenancy in common.

(2) Any transfer between an individual or individuals and a legal entity or between legal entities, such as a cotenancy to a partnership, a partnership to a corporation, or a trust to a cotenancy, that results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees, whether represented by stock, partnership interest, or otherwise, in each and every piece of real property transferred, remain the same after the transfer. The provisions of this paragraph shall not apply to transfers also excluded from change in ownership under the provisions of subdivision (b) of Section 64.

(b) Any transfer for the purpose of perfecting title to the property.

(c) (1) The creation, assignment, termination, or reconveyance of a security interest; or (2) the substitution of a trustee under a security instrument.

(d) Any transfer by the trustor, or by the trustor's spouse or registered domestic partner, or by both, into a trust for so long as (1) the transferor is the present beneficiary of the trust, or (2) the trust is revocable; or any transfer by a trustee of such a trust described in either clause (1) or (2) back to the trustor; or, any creation or termination of a trust in which the trustor retains the reversion and in which the interest of others does not exceed 12 years duration.

(e) Any transfer by an instrument whose terms reserve to the transferor an estate for years or an estate for life. However, the termination of such an estate for years or estate for life shall constitute a change in ownership, except as provided in subdivision (d) and in Section 63.

(f) The creation or transfer of a joint tenancy interest if the transferor, after the creation or transfer, is one of the joint tenants as provided in subdivision (b) of Section 65.

(g) Any transfer of a lessor's interest in taxable real property subject to a lease with a remaining term (including renewal options) of 35 years or more. For the purpose of this subdivision, for 1979–80 and each year thereafter, it shall be conclusively presumed that all homes eligible for the homeowners' exemption, other than manufactured homes located on rented or leased land and subject to taxation pursuant to Part 13 (commencing with Section 5800) and floating homes

subject to taxation pursuant to Section 229, that are on leased land have a renewal option of at least 35 years on the lease of that land, whether or not in fact that renewal option exists in any contract or agreement.

(h) Any purchase, redemption, or other transfer of the shares or units of participation of a group trust, common trust fund, pooled fund, or other collective investment fund established by a financial institution.

(i) Any transfer of stock or membership certificate in a housing cooperative that was financed under one mortgage, provided that mortgage was insured under Section 213, 221(d)(3), 221(d)(4), or 236 of the National Housing Act, as amended, or that housing cooperative was financed or assisted pursuant to Section 514, 515, or 516 of the Housing Act of 1949 or Section 202 of the Housing Act of 1959, or the housing cooperative was financed by a direct loan from the California Housing Finance Agency, and provided that the regulatory and occupancy agreements were approved by the governmental lender or insurer, and provided that the transfer is to the housing cooperative or to a person or family qualifying for purchase by reason of limited income. Any subsequent transfer from the housing cooperative to a person or family not eligible for state or federal assistance in reduction of monthly carrying charges or interest reduction assistance by reason of the income level of that person or family shall constitute a change of ownership.

(j) Any transfer during the period March 1, 1975, to March 1, 1981, between coowners in any property that was held by them as coowners for all or part of that period, and which was eligible for a homeowner's exemption during the period of the coownership, notwithstanding any other provision of this chapter. Any transferee whose interest was revalued in contravention of the provisions of this subdivision shall obtain a reversal of that revaluation with respect to the 1980–81 assessment year and thereafter, upon application to the county assessor of the county in which the property is located filed on or before March 26, 1982. No refunds shall be made under this subdivision for any assessment year prior to the 1980-81 fiscal year.

(k) Any transfer of property or an interest therein between a corporation sole, a religious corporation, a public benefit corporation, and a holding corporation as defined in Section 23701h holding title for the benefit of any of these corporations, or any combination thereof (including any transfer from one entity to the same type of entity), provided that both the transferee and transferor are regulated by laws, rules, regulations, or canons of the same religious denomination.

(l) Any transfer, that would otherwise be a transfer subject to reappraisal under this chapter, between or among the same parties for the purpose of correcting or reforming a deed to express the true intentions of the parties, provided that the original relationship between the grantor and grantee is not changed.

(m) Any intrafamily transfer of an eligible dwelling unit from a parent or parents or legal guardian or guardians to a minor child or children or between or among minor siblings as a result of a court order or judicial decree due to the death of the parent or parents. As used in this subdivision, "eligible dwelling unit" means the dwelling unit that was the principal place of residence of the minor child or children prior to the transfer and remains the principal place of residence of the minor child or children after the transfer.

(n) Any transfer of an eligible dwelling unit, whether by will, devise, or inheritance, from a parent or parents to a child or children, or from a guardian or guardians to a ward or wards, if the child, children, ward, or wards have been disabled, as provided in subdivision (d) of Section 12304 of the Welfare and Institutions Code, for at least five years preceding the transfer and if

the child, children, ward, or wards have adjusted gross income that, when combined with the adjusted gross income of a spouse or spouses, parent or parents, and child or children, does not exceed twenty thousand dollars (\$20,000) in the year in which the transfer occurs. As used in this subdivision, "child" or "ward" includes a minor or an adult. As used in this subdivision, "eligible dwelling unit" means the dwelling unit that was the principal place of residence of the child or children, or ward or wards for at least five years preceding the transfer and remains the principal place of residence of the child or children, or ward or wards after the transfer. Any transferee whose property was reassessed in contravention of the provisions of this subdivision for the 1984–85 assessment year shall obtain a reversal of that reassessment upon application to the county assessor of the county in which the property is located. Application by the transferee shall be made to the assessor no later than 30 days after the later of either the transferee's receipt of notice of reassessment pursuant to Section 75.31 or the end of the 1984–85 fiscal year.

(o) Any transfer of a possessory interest in tax-exempt real property subject to a sublease with a remaining term, including renewal options, that exceeds half the length of the remaining term of the leasehold, including renewal options.

(p) (1) Commencing on January 1, 2000, any transfer between registered domestic partners, as defined in Section 297 of the Family Code, including, but not limited to:

(A) Transfers to a trustee for the beneficial use of a registered domestic partner, or the surviving registered domestic partner of a deceased transferor, or by a trustee of such a trust to the registered domestic partner of the trustor.

(B) Transfers that take effect upon the death of a registered domestic partner.

(C) Transfers to a registered domestic partner or former registered domestic partner in connection with a property settlement agreement or decree of dissolution of a registered domestic partnership or legal separation.

(D) The creation, transfer, or termination, solely between registered domestic partners, of any coowner's interest.

(E) The distribution of a legal entity's property to a registered domestic partner or former registered domestic partner in exchange for the interest of the registered domestic partner in the legal entity in connection with a property settlement agreement or a decree of dissolution of a registered domestic partnership or legal separation.

(2) Any transferee whose property was reassessed in contravention of the provisions of this subdivision for a transfer occurring between January 1, 2000, and January 1, 2006, shall obtain a reversal of that reassessment upon application to the county assessor of the county in which the property is located. Application by the transferee shall be made to the assessor no later than June 30, 2009. A county may charge a fee for its costs related to the application and reassessment reversal in an amount that does not exceed the actual costs incurred. This paragraph shall be liberally construed to provide the benefits of this subdivision and Article XIII A of the California Constitution to registered domestic partners.

(A) After consultation with the California Assessors' Association, the State Board of Equalization shall prescribe the form for claiming the reassessment reversal described in paragraph (2). The claim form shall be entitled "Claim for Reassessment Reversal for Registered Domestic Partners." The claim shall state on its face that a "certificate of registered domestic partnership" is available upon request from the California Secretary of State.

(B) The information on the claim shall include a description of the property, the parties to the transfer of interest in the property, the date of the transfer of interest in the property, and a statement that the transferee registered domestic partner and the transferor registered

domestic partner were, on the date of transfer, in a registered domestic partnership as defined in Section 297 of the Family Code.

(C) The claimant shall declare that the information provided on the form is true, correct, and complete to the best of his or her knowledge and belief.

(D) The claimant shall provide with the completed claim the "Certificate of Registered Domestic Partnership," or photocopy thereof, naming the transferee and transferor as registered domestic partners and reflecting the creation of the registered domestic partnership on a date prior to, or concurrent with, the date of the transfer for which a reassessment reversal is requested.

(E) Any reassessment reversal granted pursuant to a claim shall apply commencing with the lien date of the assessment year, as defined in Section 118, in which the claim is filed. No refunds shall be made under this paragraph for any prior assessment year.

(F) Under any reassessment reversal granted pursuant to that claim, the adjusted full cash value of the subject real property in the assessment year described in subparagraph (E) shall be the adjusted base year value of the subject real property in the assessment year in which the excluded purchase or transfer took place, factored to the assessment year described in subparagraph (E) for both of the following:

(i) Inflation as annually determined in accordance with paragraph (1) of subdivision (a) of Section 51.

(ii) Any subsequent new construction occurring with respect to the subject real property.

(g) Any parent to child transfer of stock in an eligible corporation that owns eligible property, provided the transfer is due to the death of a parent or parents.

"Eligible property" means a parcel of land that (1) includes the principal place of residence of the parents prior to their death and that has been the continuous place of residence of a child of those parents since the creation of the corporation and (2) its full cash value on the date of death does not exceed one million dollars.

"Eligible corporation" means a corporation that meets all of the following conditions (1) it was created before November 6, 1986, (2) the only real property owned by the corporation consists of eligible property, (3) the only stockholders in the corporation have been the parents and their children.

Any property reassessed in contravention of the provisions of this subdivision for a transfer occurring between January 1, 2014 and January 1, 2018, shall obtain a reversal of that reassessment on a prospective basis upon application to the county assessor of the county in which the property is located. An application shall be made to the assessor no later than June 30, 2018.

**Findings and Declarations.** The Legislature finds and declares that this amendment is necessary to carry out the intent of Proposition 58 on the November 6, 1986 general election to exclude from change in ownership transfers between parents and their children described therein relating to family farms jeopardized by reappraisals caused by the death of the parents that increase property taxes significantly. Furthermore, this amendment is necessary to carry out its intent in the case of principal residences transferred into a corporation created by the parents that are subject to reappraisal pursuant to Section 64(d) after the parent's death. The full cash value limitation imposed ensures this amendment is consistent with the relief limitations specified under Proposition 58.