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November 13, 2009

Mr. Fred Holland, Acting Assessor
Butte County
25 County Center Drive, Suite 100
Oroville, California 95965-3382

***Re: Grandparent-Grandchild Exclusion – Adoption by Aunt***
***Assignment No.: 09-111***

Dear Mr. Holland:

This is in response to your June 26, 2009, request for a written opinion as to whether or not the grandparent-grandchild exclusion would apply to a transfer from a grandmother to her granddaughter when, at the time of the transfer, the natural mother to the granddaughter was deceased, the granddaughter's father had remarried *and* his parental rights had been terminated while the granddaughter was a minor, and the granddaughter had been adopted as a minor by her deceased mother's sister, who is still living. In our opinion, the exclusion is not available because all of the parents who qualify as "children" of the grandmother are not deceased, and the middle generation exception for living step-parents does not apply. Since the aunt/adoptive mother is the granddaughter's parent and qualifies as a child of the grandmother and is still living, the transfer to the granddaughter is not eligible for the grandparent-grandchild exclusion.

## FACTS

Mother and father were married in 1967. Mother gave birth to a daughter (granddaughter) in 1970 and passed away soon after the birth. Father remarried in 1972 or 1973. A few years later, while the granddaughter was still a minor, she was adopted by her aunt, her mother's sister. We are told that the father's parental rights were terminated in the same year (i.e. also while granddaughter was a minor). The granddaughter's adoptive mother (aunt/adoptive mother) is still living. Grandmother (mother to the granddaughter's mother and the aunt/adoptive mother, hereafter grandmother) passed away in 2006. Her trust provided that the granddaughter inherit the grandmother's personal residence.

## LAW

Article XIII A, section 2 of the California Constitution requires the reassessment of real property upon a change in ownership. Revenue and Taxation Code section[1] 60 defines a "change in ownership" 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. On

[1] All section references are to the Revenue and Taxation Code unless otherwise indicated.

March 26, 1996, the voters of California passed Proposition 193, which amended section 2, subdivision (h) of Article XIII A of the California Constitution to extend the parent-child exclusion to grandparent-grandchild transfers in certain limited circumstances.

Section 63.1 implements the parent-child and grandparent-grandchild exclusions from change in ownership. As relevant here,[2] the transfer of a principal residence from a grandparent to a grandchild is eligible for exclusion from reassessment as long as the grandchild has not received a principal residence, or interest therein, through another purchase or transfer that was excluded as a principal residence transfer under section 63.1, subdivision (a)(1) (transfer between parents and children), and the requirements of section 63.1, subdivision (a)(3)(A) are met.

Section 63.1, subdivision (a)(3)(A) provides that a transfer of real property from grandparent to grandchild can only be excluded from reassessment if all of the parents of the grandchild, who qualify as the children of the grandparent, are deceased as of the date of purchase or transfer. However, a son-in-law or daughter-in-law of the grandparent that is a step-parent to the grandchild need not be deceased.[3] (*Ibid*.) The term "middle generation" has been used to refer to all of the parents who qualify as the children of the grandparent. (Letter to Assessors (LTA) No. 97/23, June 5, 1997.) Thus, the grandparent-grandchild exclusion applies only when there is no living person belonging to the middle generation who is legally defined as the child of the grandparent and a parent of the grandchild, unless that member of the middle generation is a step-parent to the grandchild.

"Children" is defined in section 63.1, subdivision (c)(3) and includes, but is not limited to, any child born of the parent or any child adopted by the parent, other than an individual adopted after reaching the age of 18 years. (Rev. & Tax. Code, § 63.1 subd. (c)(3)(A) and (D).) A child, if adopted while a minor, is the child of the adoptive parent and is not the child of a parent whose parental rights were terminated; the adoptive parent is the parent of the adopted child. "Children" also includes any son-in-law or daughter-in-law of the parent, until the marriage on which the relationship is based is terminated, or, if the marriage is terminated by death, until the remarriage of the son-in-law or daughter-in-law. (Rev. & Tax. Code, 63.1, subd. (c)(3)(C).) Thus, a son-in-law is a child of his wife's parents until either he divorces his wife or until his wife dies and he remarries. A "grandchild" 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).) Therefore, a child of a grandparent includes not only the parents of a grandchild, but also that grandchild's aunts and uncles who are also children of that grandparent.

## ANALYSIS

The transfer of grandmother's principal residence to granddaughter is eligible for exclusion from reassessment only if all of the granddaughter's parents who qualify as children of grandmother are deceased as of the date of the transfer or, if still living, are not barriers to eligibility for the exclusion. In identifying the members of the middle generation who possibly qualify as a child of the grandparent and as a parent to granddaughter, we look first to the natural mother, who was a child of the grandmother and a parent to the child. Since the natural mother was deceased at the time of the transfer, she is not a barrier to eligibility for the exclusion.

[2] We assume that all requirements except for those discussed in this letter have been met.
[3] Under section 63.1, subdivision (a)(3)(A), beginning with the lien date for 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.

The second person to consider is the father. He would not be viewed as a child of the grandmother and a parent to the grandchild for two reasons. First, we are informed that he remarried in 1972 or 1973. Under section 63.1, subdivision (c)(3)(C), the son-in-law's remarriage terminated his status as a child of the grandmother. Second, the father's parental rights were terminated while the granddaughter was a minor. The termination of parental rights means he was not a parent of the granddaughter at the time of the transfer. Therefore, either the father's remarriage or the termination of his parental rights prior to the transfer would be sufficient to keep the father from barring the granddaughter's eligibility for the exclusion.

Finally, we address whether the aunt/adoptive mother prevents eligibility for the exclusion. The aunt/adoptive mother is clearly a child of the grandmother. Granddaughter is a child of the aunt/adoptive mother because granddaughter was adopted as a minor, and aunt/adoptive mother is the granddaughter's parent as a result of the adoption. Therefore, under section 63.1, subdivision (c)(4), granddaughter is a grandchild of grandmother, and aunt/adoptive mother is a member of the middle generation. Because the aunt/adoptive mother is living, the exclusion from reassessment is not available since she was not deceased at the time of the transfer and not a step-parent to the granddaughter. Thus, the aunt/adoptive mother is a barrier to the granddaughter's eligibility for the exclusion.

## CONCLUSION

If it appears that the grandparent-grandchild exclusion is being interpreted too narrowly under these facts, we note that this result is consistent with the intent of Proposition 193 because at the time of the transfer the granddaughter was eligible to receive the full benefit of the parent-child exclusion from her aunt/adoptive mother. The grandparent-grandchild exclusion is an extension of the parent-child exclusion, not an exclusion in its own right. In the "Argument in Favor of Proposition 193," Assemblyman Knowles states that this proposition was authored to allow taxpayers to decide "whether to permit property to be transferred from grandparents to their own grandchildren *only in cases where both parents are deceased*, so that California families who are caught in this unfortunate situation are not punished due to mere oversight in the law." (LTA No. 2008/018, February 27, 2008, p.18, emphasis in original.)

The views expressed in this letter are advisory in nature only; they represent the analysis of the legal staff of the Board based on present law and the facts set for herein, and are not binding on any person or public entity.

Sincerely,

/s/ Susan Galbraith

Susan Galbraith
Tax Counsel

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