



STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
916-324-2056 • FAX 916-323-3387
www.boe.ca.gov

BETTY T. YEE
Acting Member
First District, San Francisco

BILL LEONARD
Second District, Sacramento/Ontario

CLAUDE PARRISH
Third District, Long Beach

JOHN CHIANG
Fourth District, Los Angeles

STEVE WESTLY
State Controller, Sacramento

RAMON J. HIRSIG
Executive Director

December 13, 2005

Honorable Kenneth O. Reimers
Butte County Assessor's Office
25 County Center Drive
Oroville, CA 95965

Attn:

Re: Revenue and Taxation Code Section 63.1 - Parent/Child Exclusion

Dear _____ :

This is in response to your March 16, 2005 email to Kristine Cazadd, Chief Counsel, regarding the statute of limitations for filing a claim for the parent-child exclusion. As discussed in detail below, based on the given facts, we conclude that the claim at issue was not timely filed under Revenue and Taxation Code¹ section 63.1, subdivision (e).

Factual Analysis

The following chronological events were taken from the documents faxed on March 30, 2005:

1. On December 23, 1980, J and B, husband and wife, purchased a residence, as joint tenants.
2. On December 7, 1992, J and B quitclaimed the property to their son, R, reserving a life estate in the property for themselves.
3. On July 29, 2001, J died. B, the surviving spouse, retained her life estate.
4. On April 30, 2003, B died and the property was transferred to son, R.
5. On September 16, 2003, R sold the property to D and L, husband and wife, as joint tenants.
6. On December 1, 2003, the assessor's office sent to R the first written request for the parent-child exclusion claim. R did not respond.
7. On February 3, 2004, a second written request was mailed by the assessor's office to R. Again, R did not respond.

¹ Unless otherwise provided, all section references are to the Revenue and Taxation Code.

8. On March 24, 2004, because R did not respond to either request, the assessor reassessed the property as of the date of B's death and again at the date of the sale of the property to D and L. Supplemental assessment notices were mailed June 30, 2004.
9. On February 9, 2005, tax bills were mailed, with a tax due date of April 1, 2005.
10. On March 14, 2005, R presented to the assessor's office copies of the quitclaim deed filed with the county and a Claim for Reassessment Exclusion for Transfer Between Parent and Child Form that was completed and signed by J and B for the December 7, 1992 transaction. The assessor's records do not show that the claim was filed in 1992. The assessor determined that a claim form was not necessary for the creation of the life estates for the parents, and the remainder interest to the son in 1992, because a present beneficial interest in the property was not transferred to R.

During our April 28, 2005, telephone conversation you posed two specific questions, which are restated below followed by our response.

Law and Analysis

1. Is a parent-child claim that is filed on a non-reassessable transaction valid when a future assessable event occurs?

Response: No. Pursuant to section 63.1, the three-year statute of limitations for filing the parent child exclusion claim commences from the date of the purchase or transfer of the real property, in this case, at the termination of the parents' life estate.

"Change in ownership" is defined by section 60 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." Section 62, subdivision (e) provides in pertinent part that a change in ownership shall not include "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."

On December 7, 1992, J and B quitclaimed the property to their son, R, but reserved a life estate for themselves. Thus, no change in ownership occurred pursuant to section 62, subdivision (e), until the death of the last surviving parent.

On July 29, 2001, J died. Thereafter, when B died on April 30, 2003, the life estate terminated at which time there was (absent a parent-child exclusion pursuant to section 63.1) a change in ownership of the property, because R became the present beneficial owner of the property.

Section 63, subdivision (c)(1) provides that a purchase or transfer between parents and their children means either a transfer from a parent or parents to a child or children of the parent. The date of any transfer between parents and their children under a will or intestate succession is the date of the decedent's death. The term "purchase" is not defined in section 63.1. Section 67, however, defines it as "a change in ownership for consideration." The term "transfer" is defined in section 63.1, subdivision (c)(9) to include, and 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.”

From the foregoing statutes, it is clear that a “purchase” or “transfer” for purposes of section 63.1 must be of a present beneficial interest or ownership in real property and does not include the purchase or transfer of a future interest. Accordingly, the transfer of the real property for purposes of the parent-child exclusion occurs when the remainder interest of the child becomes possessory rather than when it is created. Therefore, the three-year statute of limitations for filing the parent child exclusion claim commences from the date of the purchase or transfer of the real property. This being the case, the claim documents purportedly filed in 1992 for a non-reassessable transaction would not be valid for future transfers.

The 2003 Transfer

Section 63.1, subdivision (d) requires that a claim be filed by the eligible transferee, the transferee’s legal representative or the executor or administrator of the transferee’s estate and that, along with the claim, the claimant furnish specified documents to the assessor. The time periods for timely filing of a claim are prescribed by subdivision (e). For the exclusion to take effect from the date of the transfer, subparagraph (1)(B) requires that claims for transfers of real property between parents and their children occurring on or after September 30, 1990, shall be filed within three years after the date of the purchase or transfer of real property for which the claim is filed or prior to transfer of the real property to a third party, whichever is earlier. In addition, subparagraph (1)(C) is an exception to the three-year filing period and provides:

Notwithstanding subparagraphs (A) and (B), a claim shall be deemed to be timely filed if it is filed within six months after the date of mailing of a notice of supplemental or escape assessment, issued as a result of the purchase or transfer of real property for which the claim is filed.

According to the facts presented, the assessor did determine that a change in ownership did occur at B’s death on April 30, 2003. Therefore, in this case, the three-year period set forth in subparagraph (e)(1)(B) of section 63.1, expired on September 16, 2003, when R sold the property to D and L. Subsequently, the assessor mailed a notice of supplemental assessment on June 30, 2004. Thus, in accordance with subdivision (e)(1)(C), R could have file a claim for exclusion within six months after the date of mailing of the notice of the supplemental assessment. However, R did not respond to the notice until March 14, 2005, thus, the filing requirements set forth in section 63.1 were not met. The filing of a timely claim is the obligation of the person claiming the exemption; thus, R’s failure to submit a timely claim in accordance with section 63.1, subdivisions (e)(1)(B) and (e)(1)(C) is deemed a waiver of the exemption.

2. If the 1992 claim documents are deemed timely filed, does the assessor’s office have the authority to correct the rolls?

Response: Not applicable, see above response. However, section 51.5 provides specific authority for assessors to correct errors in the determination of a base year value.

Section 51.5, subdivision (a) provides that “Notwithstanding any other provision of the law, any error or omission in the determination of a base year value pursuant to paragraph (2) of subdivision (a) of Section 110.1, including the failure to establish that base year value, which does not involve the exercise of an assessor’s judgment as to value, shall be corrected in any assessment year in which the error or omission is discovered.” Thus, pursuant to subdivision (a), the assessor is authorized to correct errors or omissions not involving the exercise of an assessor’s judgment as to value in any year in which they are discovered.

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.

Very truly yours,

/s/ Shirley Johnson

Shirley Johnson
Tax Counsel

SJJ:jlh

Prec/ParChild/05/119.SJ.doc

cc: Mr. David Gau, MIC:63
Mr. Dean Kinnee, MIC:64
Ms. Mickie Stuckey, MIC:62
Mr. Todd Gilman, MIC:70
Ms. Glenna Schultz, MID: 64