



STATE BOARD OF EQUALIZATION

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November 19, 2002

JAMES E. SPEED
Executive Director

Attorney At Law

***Re: Prop. 58 - Sale of Child's Home to Parents
Through Foreclosure Sale***

Dear Mr. _____ :

This is in response to your November 1, 2002, letter to the Board's legal staff wherein you asked, if a child's primary residence was in foreclosure, and if the child's parents purchased the residence at a foreclosure sale, would such a purchase constitute a "purchase or transfer between parents and their child", thus allowing the parents to file and successfully make a claim for property tax exclusion under Proposition 58/Article XIII A, section 2 of the California Constitution and Revenue and Taxation Code section 63.1. For the reasons hereinafter set forth, in our view, such a purchase would constitute a "purchase or transfer between parents and their child" under section 63.1(c)(1) if, in fact, the sale was made by the child himself or herself and not by an intermediary; and of course, all other requirements of section 63.1 as well would have to be met for the section 63.1 exclusion to apply. Such a purchase would not constitute a "purchase or transfer between parents and their child", however, if the sale were made by a person other than the "eligible transferor," for example, by a trustee in the course of a foreclosure sale.

As the parent-child exclusion is administered by county assessors, you may wish to contact the assessor of the county in which the residence is located in order to ascertain whether he or she is in agreement with the conclusions and analysis herein.

Analysis

As you know, Proposition 58 added subdivision (h) to section 2 of Article XIII A of the California Constitution. Briefly, subdivision (h) excludes from change in ownership the purchase or transfer of the principal residence of the transferor in the case of the purchase or transfer between parents and their children. It also excludes the purchase or transfer of the first \$1 million of the full cash value of all other real property between parents and their children.

Subdivision (h) is implemented by Revenue and Taxation Code section 63.1. Section 63.1(c)(1) defines "purchase or transfer between parents and their children" to mean either a transfer from a parent or parents to a child or children of the parent or parents or a transfer from a child or children to a parent or parents of the child or children; section 63.1(c)(3) defines "children"; section 63.1(c)(6) defines "eligible transferor" to mean a child of an eligible transferee; and section 63.1(c)(7) defines "eligible transferee" to mean a parent of an eligible transferor. And section 63.1(g) provides, in part, that the section applies to both voluntary transfers and transfers resulting from a court order or judicial decree.

Accordingly, a purchase of a child's residence which is in foreclosure, by the child's parents from the child himself or herself would constitute a "purchase or transfer between parents and their child" by an "eligible transferor" and "eligible transferees" for purposes of section 63.1(c). Of course, all other requirements of section 63.1 as well would have to be met for the section 63.1 exclusion to apply.

As you also know, there are several types of foreclosure, some of which may involve transfers or sales by the owner, trustor, etc. and others of which may involve transfers or sales by an intermediary, such as a trustee; and some of which may not involve a judicial action and some of which may. Property Tax Rule No. 462.120, Change in Ownership - Foreclosure, formerly Rule No. 462(g), provides in this regard:

- 462.120 (a) Mortgage or deed of trust foreclosed by judicial action is a sufficient change in ownership only:
- (1) After the period of redemption has passed and property has not been redeemed, or
 - (2) Upon redemption when title vests in the original debtor's successor in interest.
- (b) Deed of trust foreclosed by trustee's sale shall cause a reappraisal as of the date the right of possession vests in the purchaser.
- (c) A transfer by a trustor in lieu of a trustee's foreclosure sale constitutes a change in ownership.

Thus, while most foreclosures and sales or transfers of real properties result in changes in ownership of the real properties, including transfers by trustors in lieu of trustees' foreclosure sales, only purchases or transfers between child or parent trustors and parent or child purchasers or transferees would be purchases or transfers between parents and their child for purposes of section 63.1, as discussed above.

As to why a change in ownership occurs under Revenue and Taxation Code section 60 et. seq. upon a foreclosure, enclosed please find a copy of Property Tax Annotation No. 220.0241, Foreclosure, and the January 4, 1991, letter upon which it is based.

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. You may wish to contact the assessor of the county in which the residence is located in order to ascertain whether he or she is in agreement with the above-mentioned conclusions and analysis.

Very truly yours,

/s/ James K. McManigal, Jr.

James K. McManigal, Jr.
Tax Counsel IV

Enclosure

JKM:lg

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cc: Honorable
County Assessor

Ms. Kristine Cazadd
Mr. David Gau, MIC:63
Mr. Dean Kinnee, MIC:64
Ms. Jennifer Willis, MIC:70