



## STATE BOARD OF EQUALIZATION

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September 29, 2011

**Re: Parent-Child Exclusion Claim for  
 Assignment No.: 11-081**

Dear Ms. Long:

This is in response to your request for a legal opinion on the denial of a parent-child exclusion claim by the Los Angeles County Assessor's Office (the Assessor's Office) for your client, S (S ).<sup>1</sup> We have reviewed the relevant documentation you have provided to us. We have summarized the pertinent facts below. Our opinion is based solely upon the facts as summarized below, and any assumptions made and stated herein.

**Facts**

There are two principal properties at issue in this matter, Court # , , APN -055 (Property 1), and Road (also known as South Avenue), APN -033 (Property 2). In addition, a residence located at Road, , APN (the House) was the subject of a parent-child exclusion for principal residences. The parties involved in the transactions at issue in this matter are S , her brother R (R ), and their parents F (Father) and D (Mother). Father and Mother are both deceased. Neither Father nor Mother had previously used any of their available \$1 million parent-child exclusion.

On July 10, 1979, Father and Mother (together, the Trustors) executed the G Family Trust (the Original Trust), and conveyed multiple assets to the Original Trust, including Property 1, Property 2 and the House. The Original Trust was amended in 1991 (the Family Trust) and provided for the distribution of assets, including the relevant properties, upon the Trustors' deaths.

Father died in 1998 and a Survivor's Trust and a Decedent's Trust were established as set forth in the Family Trust.

<sup>1</sup> Throughout this opinion, we refer to your client as S , and when we say that S took a certain action, we understand that the action may have actually been taken by S with her husband Steve, or by Steve acting on S 's behalf.

Mother died on June 6, 2003, at which time S and R became co-trustees of the Family Trust. After Mother's death, disputes arose between S, R, and their families over the proper distribution of certain properties in the trust estate, including the House. In September 2008, S, R and their family members entered into a Settlement Agreement and Mutual Release (the Settlement Agreement). The Settlement Agreement provided that R would receive Property 2 and the House outright (Section 3(a), (b)), and S would receive Property 1.

On July 24, 2009, the following actions took place in accordance with the Settlement Agreement: (i) By grant deed S and R, as trustees of the Family Trust, transferred Property 2 and the House to R; (ii) By grant deed S and R, as trustees of the Family Trust, transferred Property 1 to S outright; and (iii) R resigned as a co-trustee of the Family Trust. The deeds to Property 1, Property 2, and the House were recorded on July 31, 2009.

It was your understanding that the title insurance and escrow company that the parties used to settle their claims and transfer the properties, Title Insurance Corporation and Land Title Insurance Company, (the Title Company), was to file a Form BOE-58-AH, Claim For Reassessment Exclusion For Transfer Between Parent and Child (BOE-58-AH), for S as transferee of Property 1 with the Assessor's Office when it recorded the deeds. (Your firm sent the BOE-58-AH to the Title Company in the same package with the deeds on July 21, 2009.)

It is not clear when the Title Company sent the Form BOE-58-AH for S's claim on Property 1 to the Assessor's Office. The Assessor's Office states that it received this form on January 6, 2010. The BOE-58-AH had an execution date of July 27, 2009. The filed BOE-58-AH did not include a copy of the Family Trust.

On or about April 2010, R filed a BOE-58-AH and claimed the exclusion for a principal residence on the House, and claimed the exclusion for up to \$1 million of "other property" from each parent on Property 2. As sole trustee of the Family Trust in April 2010, S did not sign this Form BOE-58-AH.<sup>2</sup> The Assessor's Office received these claims on April 20, 2010. R included a copy of the Family Trust with his Form BOE-58-AH. The Assessor's Office approved R's claim with respect to the House and granted R the full \$2 million exclusion (\$1 million from each of Father and Mother) on Property 2 because the full cash value of Property 2 upon Mother's date of death was in excess of \$2 million.

On July 9, 2010, S received a supplemental tax bill based upon a change in ownership and reassessment of Property 1.

On July 9, 2010, S called the Assessor's Office to inquire about the supplemental tax bill and spoke with assessor staff, who instructed her to download a BOE-58-AH and to file it. On the same day, S completed another BOE-58-AH, claiming a portion of Mother's \$1 million exclusion to be applied to Property 1. Again, this claim did not include a copy of the

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<sup>2</sup> We have not seen this claim form and assume that R signed the transferee certification in his own name and the transferor certification as trustee of the Family Trust. We are not aware of the date that R made the transferor certification as trustee of the Family Trust.

Family Trust, which the Assessor's Office already had, having received it with R's claim filed in April.

On September 17, 2010, the Assessor's Office sent to S a form OWN-120, which stated:

There has been no "Change in Ownership" as defined by law. The reappraisal previously processed will be reversed. The 2009-010 Supplemental bill(s) will be canceled, and corrected bills and/or refunds will be issued, as appropriate. Any delinquency penalties, which may have resulted from the original reappraisal, will be waived.

On November 1, 2010, the Assessor's Office reversed course and sent to S a second form OWN-120, which stated: "Your claim has been denied for the following reasons," and then the box "Other" was checked, with the following comment:

According to the Legal Services Unit, we processed the Prop 58 Claim for R first as he turned in the requested Trust Document ahead, 3 months prior to you turning it in.<sup>3</sup> The processing is on a first come first served basis in the absence of instructions as to which properties will be processed first.

Upon receipt of this form, S called D of the Assessor's Office. It is your understanding that Mr. D tried to resolve the issue within the Assessor's Office over the following two month period, and ultimately was unsuccessful, but persuaded S to send a letter to , Senior Property Assessment Specialist.

On January 10, 2011, S sent a letter by fax to " " [sic] , asserting that each of S and R should have been attributed \$1 million of the total \$2 million parent-child exclusion available from Father and Mother. S followed up by telephone a couple weeks later, and was told that her claim was denied because her claim was incomplete and that R had already been granted the entire \$2 million exclusion because his claim was the first complete claim.

S contacted your firm to assist you in this matter. In January, your firm made multiple calls to the Assessor's Office, trying to determine what had occurred. In those calls, you were told the following: (i) S's claim was "incomplete" because it failed to include a copy of the Family Trust; (ii) S did not respond to the Assessor's Office's requests for a copy of the Family Trust; (iii) the Assessor's Office approved R's claim because it included a copy of the Family Trust; and (iv) R's claim was approved because it was the first in time complete claim.

Your office sent a letter to the Assessor's Office dated February 28, 2011, in which you asserted that the exclusion was to be allocated first to Property 1 because S's was the "first in time" claim, and that any remaining balance of the \$2 million exclusion could be applied to Property 2. In that letter, you also asserted that the BOE-58-AH filed by R on Property 2 was unauthorized because R, who was no longer a trustee of the Family Trust, signed it as a trustee and no longer had such power.

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<sup>3</sup> Because S never actually provided a copy of the Family Trust, we assume this means "3 months prior" to S's second filing of the BOE-58-AH.

To follow up, you and \_\_\_\_\_ of your office spoke with \_\_\_\_\_ at the Assessor's Office, who did not agree with your firm's position as outlined in the February 28<sup>th</sup> letter. On April 13, 2011, Ms. \_\_\_\_\_ sent to your office a form OWN-128 "Investigation of Ownership Claim," with the box "Other" checked and a notation which reads:

You are not the authorized agent/attorney for R \_\_\_\_\_. He is represented by counsel. Any information pertaining to his claim is confidential. Although we are in receipt of your letter dated February 28, 2011 to R \_\_\_\_\_ L \_\_\_\_\_, we can not honor your request. [¶] It is the responsibility of the transferees to decide the allocation of the exclusion.

On April 21, 2011, S \_\_\_\_\_ sent to \_\_\_\_\_ a letter requesting that the Assessor's Office send a copy of R \_\_\_\_\_'s claim to your office. S \_\_\_\_\_'s basis for this request was that she was a "trustee of the transferor's trust" and thus was able to inspect the claim under Revenue and Taxation Code section 63.1, subdivision (i). In response to S \_\_\_\_\_'s request, the Assessor's Office sent to your office a "Declaration of No Records," dated April 27, 2011, and signed by the Custodian of Records, which states as follows:

In response to your request for documents pertaining to \_\_\_\_\_ -033, \_\_\_\_\_ Road, \_\_\_\_\_, CA[,] Revenue and Taxation Code Section 408 prohibits our office from disclosing records that are not public documents unless we are compelled by a Judge [sic] to do so. The documents you have requested are privileged and cannot be produced to you.

That "Declaration of No Records" also quoted Revenue and Taxation Code section 408, subdivision (e)(3). Subsequently, I had a conversation with the Assessor's Office regarding the ability of S \_\_\_\_\_ to inspect R \_\_\_\_\_'s claim, and it was agreed that she would be able to inspect the claim if she went to the office.

On June 29, 2011, your office sent another request to the Assessor's Office, for any records of a written request having been made to S \_\_\_\_\_ seeking a copy of the Family Trust. In response, on June 20, 2011, the Custodian of Records signed a "Declaration of No Records," which states:

In response to your request sent via facsimile dated June 29, 2011, "for any request(s) from our office to S \_\_\_\_\_ asking for the Trust Agreement in connection with the Claim for Reassessment Exclusion for transfer between Parent and Child filed for APN \_\_\_\_\_ -055", we respectfully respond: [¶] To clarify, our office indicated that a request for the trust agreement in order to approve such claim was made of your client. There is nothing to indicate that this request was mailed. We are in accord with your client's admission that she never received a written request. [¶] However, we maintain a request was made, telephonically. In our normal course of business, an effort is made to give the taxpayer every opportunity to have their claim granted. Thus, telephonic requests are made of the taxpayer if the supporting documentation is absent, instead of immediately denying the deficient claim. We maintain that telephonic communication welcoming supplemental information is an expeditious, prudent and courteous means of notifying a taxpayer. Generally, if and/or when the requested materials are received and all other requirements are met, the taxpayer

obtains the benefit requested without delay. Ultimately, the responsibility is upon the taxpayer making the claim, [sic] to file timely and ensure that all requirements of the exclusion have been satisfied.

You have asked our opinion whether the Assessor's Office correctly granted the full \$2 million exclusion to R's claim.<sup>4</sup>

### Law and Analysis

Section 63.1 sets forth the parent-child exclusion from change in ownership. To receive the exclusion, a claimant must file a claim form, BOE-58-AH, with the assessor. Section 63.1, subdivision (d)(1) provides, in relevant part, that the exclusion is only allowed if the transferee<sup>5</sup> files a claim with the assessor and furnishes to the assessor each of the following items:

(A) A written certification by the transferee that the transferee is an eligible transferee (Rev. & Tax. Code, § 63.1, subd. (d)(1)(A));

(B) A written certification by the transferor, the transferor's legal representative, the trustee of the transferor's trust, or the executor or administrator of the transferor's estate, that the transferor was an eligible transferor (Rev. & Tax. Code, § 63.1, subd. (d)(1)(B)); and

(C) If the transfers involve residential real property and other real property, a written certification including both of the following: (i) a certification that the residential real property is or is not the transferor's principal residence; and (ii) a certification that the other real property has or has not been previously transferred to an eligible transferee, the total full cash value of the property of any property that has been previously transferred, the location of that property, the Social Security number of each eligible transferor, and the names of the eligible transferees of that property (Rev. & Tax. Code, § 63.1, subd. (d)(1)(C)).

Section 63.1, subdivision (i) provides:

A claim filed under this section is not a public document and is not subject to public inspection, *except that a claim shall be available for inspection by the transferee and the transferor or their respective spouse, the transferee's legal representative, the transferor's legal representative, the trustee of the transferee's trust, the trustee of the transferor's trust, and the executor or administrator of the transferee's or transferor's estate.* (Emphasis added.)

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<sup>4</sup> It is our understanding that there is no dispute as to the distribution of the relevant properties or their eligibility for the parent-child exclusion and so we limit our opinion to the proper allocation of the parent-child exclusion and the issues around requests for claim inspections.

<sup>5</sup> The statute also allows for this requirement to be satisfied by the transferee's legal representative, a trustee of the transferee's trust, or the executor or administrator of the transferee's estate to fulfill this requirement; since this estate was not probated and therefore did not have an executor or administrator, we are omitting this language in the interest of brevity.

Subdivision (d)(1) of section 63.1 makes clear that for a claim form to be valid, it must be signed by both the transferor and the transferee.<sup>6</sup>

Letter to Assessor (LTA) 1991/76 (October 29, 1991) (included in Annotation 625.0036), states our long-held view that a claim form that fails to provide the minimum information required by section 63.1, subdivision (d) is incomplete and not valid and the exclusion cannot be granted unless the eligible transferee files a claim which furnishes that information.<sup>7</sup> In our opinion, the converse of this rule is also true. That is, a claim which *does* include all of the information required by subdivision (d) is both complete and valid (assuming all of the other statutory requirements are satisfied).

If an otherwise eligible transfer is made through the medium of a trust, neither Proposition 58 nor Revenue and Taxation Code section 63.1 explicitly requires the transferee to submit a copy of the trust to the assessor as a condition of receiving the exclusion. Even though the law does not require a transferee to submit a copy of the trust to make a claim complete, the Board has stated an assessor may require proof of eligibility before granting the parent-child exclusion.<sup>8</sup> In the back-up letter to Property Tax Annotation 625.0199 (May 7, 2004), the Board was asked whether a claimant could provide to the assessor a copy of a trust certification which did not state the names of the beneficiaries and did not identify the property interests held in trust, as proof of eligibility for the exclusion. We concluded that this would not suffice. Under the general laws requiring assesseees to provide any relevant information requested to enable an assessor to make an exclusion eligibility determination, in the case of transfers from trust, the assessor may require either a copy of the trust or a trust certification which includes "all information concerning the identity and interests of the beneficiaries, the powers of the trustee, and other relevant terms, as a condition of processing and granting the exclusion." This is because what is necessary for the assessor to make a determination of whether the parent-child exclusion applies is evidence about the identity and granted interests of the trust beneficiaries, the powers of the trustee, and other terms relevant to the disposition of trust assets.

In our opinion, a claim filed without a copy of the trust, which otherwise satisfies all the statutory requirements under section 63.1, even when a request for a copy of the trust has been made, is neither *invalid* nor *incomplete*, but rather is unable to be granted by the assessor.<sup>9</sup> The significance of extrinsic evidence regarding the identity of beneficiaries, their relationships to the grantors, their rights to specific properties, and the powers of the trustees, is *the information itself* so that the assessor may make a proper determination as to eligibility. Once the assessor obtains the information necessary for him or her to make the determination of eligibility for the

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<sup>6</sup> As mentioned above, we have not seen a copy of R's claim. We note here that since R was no longer a trustee of the Family Trust after July 24, 2009, if he signed the claim form after that date, there may be an issue as to whether he had the legal authority to do so. As it would be an issue to be determined under the Probate Code and California common law, we render no opinion on the legality of R signing the claim form after his resignation as trustee and the consequent validity of his claim form on that basis.

<sup>7</sup> As we said in that letter, situations may arise where a claim is filed before all of the information required in subdivision (d) is known, for example where an executor has discretion to transfer properties or where a distribution of assets may be delayed by a complicated or prolonged trust administration. Thus, it may make sense in certain circumstances to file a protective claim.

<sup>8</sup> Thus, Form BOE-58-AH, Claim for Reassessment Exclusion for Transfer Between Parent and Child, Section B, item 8 states "If the transfer was through the medium of a trust, you must attach a copy of the trust."

<sup>9</sup> We note that here, a request was made by telephone for a copy of the trust. While there is no statutory requirement that an assessor request a trust document in writing, we believe that a request for information the basis of which could be the denial of a change in ownership exclusion should be made in writing.

exclusion, the claim must be granted. If all of the necessary information may be gleaned from a single trust document, it is not relevant which beneficiary provides a copy of the trust to the assessor.<sup>10</sup>

Therefore, in this case, we note that the issue is not one of an *invalid* claim (S's, as the Assessor asserts) versus a *valid* claim (R's, because it included a copy of the Family Trust). This is also not an issue of an incomplete claim being filed, since S's claim was complete in that it provided the information required by section 63.1, subdivision (d). Further, this is also not a case where multiple transfers were made over time and thus the exclusion should be allocated to the transfers that occurred first in time.

Instead, because the transfers of Property 1 and Property 2 were made on the same date, the date of Mother's death, this is a case of competing claims. LTA 2008/018 (February 29, 2008) sets forth the Board's position on how to treat multiple claims on multiple properties from the same eligible transferor. If parent-child claims are filed for multiple properties for which the full cash values of the total properties cumulatively exceed the \$1 million limit, the transfer date determines which properties are to receive the exclusion. It is the Board's position that the first properties transferred shall receive the \$1 million exclusion in this situation. However, if the transfer date is the same for all properties (for example, the date of death), the transferees must decide which properties are to receive the exclusion.

LTA 2008/018 gives the following example of this situation:

Example 2: In addition to his principal residence, a father owns four parcels of other real property with a combined adjusted base year value of \$2,000,000. The father dies in 1992. His will bequeaths two parcels to son A and the other two parcels to son B. Both sons file parent-child exclusion claims for the real property. Since the transfer date is the same for all the properties, sons A and B must decide which properties are to receive the \$1 million exclusion. The exclusion is to be applied on a pro rata basis [between land and improvements] and not to selected portions [of each property].

This is a case just like Example 2. When competing claims are received and the combined adjusted base year values of the properties for which the claims are made exceeds the available limit, the Assessor's Office should not grant any of the requested claims, but rather should notify the transferees that they must advise the Assessor's Office of the desired allocation between the claims.

The fact that S's claim could not immediately be granted upon filing because it did not contain sufficient information to determine the identity and granted interests of the trust beneficiaries, the powers of the trustee, and other terms relevant to the disposition of trust assets, while R's later-filed claim could be granted because it included a copy of the Family Trust that provided this information, does not affect this analysis. This is because we have long

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<sup>10</sup> Of course, we acknowledge that the information a transferee provides may be determined by the assessor to be unreliable, and at the time it may be appropriate for the assessor to request additional proof or to deny a claim for exclusion and allow a claimant to appeal such determination through the ordinary appeals process. The facts here do not present such a case, since the Assessor's Office found the copy of the Family Trust provided by R reliable enough to grant the exclusion on Property 2.

recognized that claims may be filed at different times and that often protective claims may be filed when all of the information necessary to make a claim complete and valid is not yet known or available. (See Annotation 625.0036.)

We note here that an issue may arise as to the proper course of action when the assessor has received multiple claims to the same available portion of a transferor's \$1 million limit. Of course, if an allocation among the potential beneficiaries has been made, it would be appropriate to grant the claimed exclusion. However, if this is not the case, the assessor should not grant the exclusion until the beneficiaries have made such an allocation amongst themselves. In any event, the overriding principle is that all potential eligible transferees have up to three years to file a claim under section 63.1, subdivision (e)(1)(B) to obtain full relief, and in our opinion the legislative directive to liberally construe this exclusion includes allowing a full review of all claims filed within this time. Therefore, if the assessor receives, within the three years statute of limitations in subdivision (e)(1)(B), a claim against the same \$1 million limit after it has already granted the entire exclusion to another eligible transferee, in our opinion *all* of the complete and valid claims filed within the three year period for which the transfer date was the same are competing claims within the meaning of Example 2 in LTA 2008/018. The assessor should inform the beneficiaries that they must decide how to allocate the exclusion in accordance with our guidance in LTA 2008/018. This approach allows the assessor to process received claims promptly while accommodating the complexities involved in some transfer situations.

In this case, the Assessor's Office understood that competing claims were being made for Father and Mother's \$1 million each exclusion amounts. Thus, it should have, in our opinion, reversed the exclusion already granted to R , and notified S and R that they must agree upon an allocation before any exclusion is granted.<sup>11</sup>

Finally, in our opinion, section 63.1, subdivision (i), by its plain language, clearly grants a trustee of a trust the right to inspect a parent-child exclusion form filed for property which the trust was the transferor, regardless of whether that person was still a trustee at the time of the request.<sup>12</sup> Therefore, in our opinion, S has a right to view any claim for filed by R (and vice-versa) under this provision, because both were trustees of the transferor's trust at the time of the transfer. It would not matter that S was no longer a trustee at the time of her request to view R 's claim, because what is relevant is that she had a fiduciary duty with respect to the Family Trust at the time of the transfer that is the subject of his claim, and it is that legal relationship that is intended to be covered by this provision.

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<sup>11</sup> In this case, we are of the view that once the Assessor received a copy of the Family Trust from R , the Assessor had the information necessary to make a proper determination as to eligibility on both R 's claim and S 's claim. Since S 's claim was already complete and valid as meeting the statutory requirements, requiring S to provide a copy of the Family Trust to the Assessor's Office before considering her claim would be redundant and would go beyond the requirements of Proposition 58 and section 63.1.

<sup>12</sup> The right to inspect a form under section 63.1 is a different inquiry than the right of a former trustee to *sign* a claim form as a trustee. This is because whether one who had resigned as a trustee could sign documents would be governed by laws and principles outside the property tax area and those laws could limit this ability.



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.

Sincerely,

/s/ Matthew F. Burke

Matthew F. Burke  
Tax Counsel III (Specialist)

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cc: Honorable  
County Assessor

Ms.  
Senior Property Assessment Specialist  
County Assessor's Office

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