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July 30, 1996

Re: Section 63.1 Parent-Child Exclusion

Dear Ms.

This is in response to your June 13, 1996, letter to Mr. Larry Augusta, requesting advice regarding two questions relating to the implementation of the parent-child exclusion in Article XIII A, Section 2(h) of the California Constitution and Section 63.1 of the Revenue and Taxation Code.<sup>1</sup>

1) Your first question is "Which assessment roll does one use in determining the proper amount to be allocated to the parent-child exclusion for a decedent whose date of death was April 1, 1995."

The relevant facts provided in your letter and during our telephone conversation of July 15, 1996, are as follows: The father died on November 16, 1984; however, real property, which was community property, continued to be held in a trust that became irrevocable upon the mother's death on April 1, 1995. The decedents' estate that is to be distributed to the children consists of approximately two million dollars in real property, excluding their primary residence. The properties that must be allocated within the parent-child exclusion are located in three counties; San Francisco, Solano and Santa Cruz.

<sup>1</sup> All section references are to the Revenue and Taxation Code, unless otherwise indicated.

LAW AND ANALYSIS

As you are aware, Section 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."

Section 62(d), subdivision (d) provides, in pertinent part:

"Change in ownership shall not include:  
(d) Any transfer by the trustor, or by the trustor's spouse, or by both, into a trust for so long as (1) the transferor is the present beneficiary of the trust, or the (2) the trust is revocable..."

Section 63.1, subdivision (a) provides, in relevant part:

"(a) Notwithstanding any other provision of this chapter, a change in ownership shall not include...the following purchases or transfers for which a claim is filed pursuant to this section:"

\* \* \*

"(2) The purchase or transfer of the first one million dollars (\$1,000,000) of full cash value of all other real property of an eligible transferor in the case of a transfer between parents and their children."

\* \* \*

"(c) As used in this section:

\* \* \*

(3) "Full cash value" means full cash value as defined in Section 2 of Article XIII A of the California Constitution and Section 110.1 with any adjustments authorized by those sections and the full value of any new construction in progress, determined as of the date immediately prior to the date of a purchase by or transfer to an eligible transferee of real property subject to this section."

Section 110.1 defines "full cash value" as the fair market value at the 1975 lien date or the date of purchase or change in ownership when such event occurs after the 1975 assessment. Subdivision (b) further provides that the value so determined shall be known as the base year value. The section also provides for subsequent increases in the base year value to reflect inflation, not to exceed two percent per year. Thus, the full cash value of the real property is also known as the adjusted base year value.

As indicated in the September 11, 1987, Letter to Assessors No. 87/72, Proposition 58, Chapter 48, Statutes of 1987, (Assembly Bill 42), Section 63.1 as added to the Code provided various definitions, including that of "Full Cash Value" in subdivision (c) (3), set forth above. As construed on page 2 of that letter:

"4. 'Full Cash Value'--Full Cash Value as defined by Section 110.1 and Section 2 of Article XIII A of the California Constitution just prior to date of transfer; basically, the taxable value on the roll just prior to the date of transfer...."

Thus, the taxable value on the roll as of the mother's date of death, April 1, 1995, would be the value on the roll as of March 1, 1994, the value on the 1994-95 roll.

During our telephone conversation of July 15, 1996, you asked whether the parent-child exclusion applied where a parent died prior to the adoption of Article XIII A, Section 2(h) in 1986, but the transfer of real property did not occur until after the effective date of the measure, as in this case. The exclusion does apply; please see the attached September 30, 1993 opinion letter which addresses this issue.

2) Your second question concerns a two-unit residential building at 830 De Haro Street in San Francisco. Your letter states that a Declaration of Conditions, Covenants and Restrictions was filed with the San Francisco Recorder's office on June 11, 1990, which declared that the building was being improved to establish a condominium project and to provide for a separate real property interest in each unit. A project Map, filed with the City, designates Unit 1 as Lot 78 and Unit 2 as Lot 79; however, the owners did not file for separate assessments. The executors sold Unit 1 for \$280,250 to a third party on August 1, 1995. They subsequently filed an Affidavit of Interest to Segregate Property, to separate the two units into two appraisal units for property tax purposes, on December 14, 1995. The 1994-1995 roll value for the property was \$377,474. Unit 2 was appraised at \$280,000 as of April 1, 1995.

Your second question is what is the proper amount to allocate to the parent-child exclusion, \$377,474, the value on the 1994-95 roll for the two units, or half that amount for the unit that will be distributed to the decedent's child.

Your view is that half the value of the property on the 1994-95 roll should be allocated to the parent-child exclusion for the remaining unit that is to be transferred to a child of the decedent. You state that the San Francisco Assessor's staff has taken the position that the entire \$377,474 value on the roll should be allocated because the property, on the date of the decedent's death, was one unit for property tax purposes.

#### LAW AND ANALYSIS

Civil Code Section 783 provides that a condominium is an estate in real property described in Section 1351, subdivision (f) of the Civil Code.

Civil Code Section 1351(f) defines a condominium as an estate in real property consisting of two interests: (1) an undivided interest in common in a portion of a parcel of real property, and (2) a separate interest in space in a building in such real property. Thus, there can be no undivided interest in common and therefore, there can be no condominium by statutory definition, until at least one condominium unit is sold or transferred.


Section 2188.3(a) of the Revenue and Taxation Code does not require separate assessment of individual units unless they meet the definition of a condominium in Civil Code Section 783. Therefore, Section 2188.3 requires the assessor to separately assess condominium units only after the conveyance of at least one unit. Since there can be no condominium until at least one unit is conveyed, and since the condominium conversion had not been completed on April 1, 1995, because no unit had been conveyed as of that date, there is no legal basis for making separate assessments of each unit as of the date of the mother's death. The fact that a project map, declaration and other documents pertinent to the requirements of Civil Code Sections 1350 et seq. were filed with the Recorder's office does not alter this analysis. (See also County of Los Angeles v. Hartford Accident and Indemnity Co. (1970) 3 Cal.App. 809)

In conclusion, the property on April 1, 1995, did not meet the legal requirements for a condominium; therefore, it remained a single appraisal unit for purposes of Section 63.1. In our view, the San Francisco Assessor's staff is correct in concluding that the value of the property on the 1994-95 roll as of the mother's death, \$377,474, would be the proper amount to allocate to the parent-child exclusion.

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. You may wish to consult the appropriate assessors in San Francisco, Solano and Santa Cruz Counties in order to confirm that the described properties will be assessed in a manner consistent with the conclusion stated above.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,



Mary Ann Alonzo  
Tax Counsel

MAA:jd

precednt/parchild/1996/96013.maa

Attachment

cc: Honorable Doris Ward  
San Francisco County Assessor

Honorable Robert B. Blechschmidt  
Solano County Assessor

Honorable Robert C. Petersen  
Santa Cruz County Assessor

Mr. Jim Speed, MIC:63  
Mr. Richard Johnson, MIC:64  
Ms. Jennifer Willis, MIC:70