



## STATE BOARD OF EQUALIZATION

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March 27, 2013

**Re: *Parent-Child Exclusion Non-Pro Rata Distribution***  
***Assignment No.: 12-274***

Dear Ms. \_\_\_\_\_ :

This is in response to your letter to Mr. Dean Kinnee, Chief of the County Assessed Property Division, dated August 21, 2012, requesting an opinion as to whether the parent-child exclusion applies to a non-pro rata distribution of property via a probate court order of distribution when the will expresses no authority for the property to be distributed in such manner. As explained below, if the distribution is pursuant to a petition filed by the personal representative under Probate Code section 11950, then the parent-child exclusion will apply.

**Facts**

S \_\_\_\_\_ W \_\_\_\_\_ (Mother) died testate. Her will provided, "I, S \_\_\_\_\_ W \_\_\_\_\_, being of sound mind, in the event of my death, wish to leave my two properties and all money and bank accounts to my three children." The estate is comprised of two parcels of real property located in \_\_\_\_\_ County and \$100,000 cash.<sup>1</sup> Property A has a current value of \$800,000 and you indicated that it qualifies as a principal residence. Property B has a current value of \$900,000. Child A wishes to receive Property A; Child B wishes to receive Property B; and Child C wishes to receive cash and other assets.

The personal representative will be petitioning the Court to order the distribution of the estate and wishes to address any concerns the county assessor may have regarding the application of the parent-child exclusion to the proposed transfers of Properties A and B to the three children of Mother in non-pro rata manner. The personal representative proposes petitioning the Court for an Order of Distribution as follows:

- a. 75% of Property A will be distributed to Child A;
- b. The Estate will sell a 25% interest in Property A to Child A for \$200,000;
- c. 66.67% of Property B will be distributed to Child B;
- d. The Estate will sell to Child B a 33.33% interest in Property B for \$300,000; and
- e. The consideration received from the sales, together with the existing cash, will be distributed to Child C.

<sup>1</sup> Your letter states the estimated amount of cash is the amount anticipated to be available at the time of closing after paying closing costs.

### Law & Analysis

Article XIII A, section 2 of the California Constitution requires the reassessment of real property upon a "change in ownership." Revenue and Taxation Code<sup>2</sup> section 63.1 provides an exclusion from change in ownership for certain purchases or transfers of real property between parents and their children on or after November 6, 1986; namely, the transferor's principal residence and up to \$1,000,000 of other real property.<sup>3</sup> Subdivision (c)(1) of section 63.1 states, in part, "the date of any transfer between parents and their children under a will or intestate succession shall be the date of the decedent's death, if the decedent died on or after November 6, 1986."

Letter to Assessor (LTA) 91/08 states that any devise of property to more than one person vests the property in those persons as tenants in common *unless* a contrary intention is indicated in the will. Here, Mother's will did not express an intent for A, B and C to take Properties A and B in any form other than as tenants in common. Civil Code section 686 states that:

*Every interest created in favor of several persons in their own right is an interest in common, unless acquired by them in partnership, for partnership purposes, or unless declared in its creation to be a joint interest, as provided in Section 683, or unless acquired as community property. (Emphasis added.)*

In *Estate of Russell* (1968) 69 Cal.2d 200, 203, testatrix left a validly executed holographic will which read, "I leave everything I own real & personal to Chester H. Quinn and Roxy Russell. Thelma L. Russell." The court stated, "Interpreting the provisions relating to testatrix's residuary estate in accordance with the only meaning to which they are reasonably susceptible, we conclude that testatrix intended to make a disposition of all of the residue of the estate to Quinn and [Roxy Russell] in equal shares; therefore, as tenants in common."<sup>4</sup> The California Supreme Court stated that, "A disposition in equal shares to two beneficiaries cannot be equated with a disposition of the whole to one of them who may use whatever portion thereof as might be necessary on behalf of the other."<sup>5</sup>

Here, Mother devised two properties to her three children A, B and C. Under the aforementioned authority, A, B and C inherited equal shares of each property as tenants in common. However, the personal representative proposes to petition the probate court to make a non-pro rata distribution pursuant to Probate Code section 11950, subdivision (a), which provides:

If two or more beneficiaries are entitled to the distribution of undivided interests in property and have not agreed among themselves to a partition, allotment, or other division of the property, any of them, or the personal representative at the request of any of them, may petition the court to make a partition, allotment, or other division of the property that will be equitable and will avoid the distribution of undivided interests.

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<sup>2</sup> All further statutory references are to the Revenue & Taxation Code, unless otherwise specified.

<sup>3</sup> Rev. & Tax. Code, § 63.1, subd. (a)(1) & (2).

<sup>4</sup> *Id.* at 215.

<sup>5</sup> *Id.* at 214.

The personal representative's petition would seek to distribute Property A 100 percent to Child A and Property B 100 percent to Child B. Child A and Child B would pay cash to the estate which will be distributed to Child C.

We have advised that, unless a will clearly grants the executor broad discretion in distributing property in kind on a pro rata or non-pro rata basis, a child's contribution of money to the estate in exchange for a greater interest in the property than he would have otherwise received constitutes a purchase of the other siblings' interest in the property, with the other siblings being the transferors of the property.<sup>6</sup> Further, we have advised that, where a will contains a provision granting the executor broad discretion in distributing property in kind on a pro rata or non-pro rata basis, a court ordered sale to one of the beneficiaries will be deemed a transfer directly from the parent to the child.<sup>7</sup>

In this case the will contains no such provision. However, the personal representative's proposed petition to distribute the properties in a non-pro rata fashion, in our opinion, is equivalent to the exercise of a provision allowing such a distribution. That is, a court order pursuant to a petition by a personal representative under section 11950 achieves the same result as if the will had contained a provision allowing non-pro rata distributions. In both cases, the action of the personal representative, rather than an agreement of sale between the heirs, is what results in the non-pro rata distribution. Further, the order of distribution supersedes the will, and is a conclusive determination of its effect. (14 Witkin, Summary of Cal. Law (10th ed. 2010) Wills and Probate, § 727(1).) Therefore, it is as if the non-pro rata distribution made by the order was contained in the will. Such being the case, the parent-child exclusion may apply since Properties A and B are being transferred from the estate, and not from the siblings.

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. Should you have any additional questions, please feel free to contact me.

Sincerely,

/s/ Daniel Paul

Daniel Paul  
Tax Counsel

DMP:yg

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cc: Hon.

County Assessor

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

<sup>6</sup> See Property Tax Annotation 625.0260. Property Tax Annotations are summaries of the conclusions reached in selected legal rulings of Board Legal counsel published in the Board's Property Tax Law Guide and on the Board's website. See Cal. Code Regs., tit. 18, § 5700 for more information regarding annotations.

<sup>7</sup> See Property Tax Annotation 625.0251.