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No. 2003/018

TO COUNTY ASSESSORS:

REVENUE AND TAXATION CODE SECTION 63.1,
PARENT-CHILD EXCLUSION SIGNATURE REQUIREMENTS

The Governor signed into law Senate Bill 2092 (Chapter 775 of the Statutes of 2002) which, in part, amends Revenue and Taxation Code¹ section 63.1(d) to reinstate the requirement that the transferor's signature be provided on the claim form for the parent-child and grandparent-grandchild exclusions. These changes became effective on January 1, 2003, and apply to claims filed after January 1, 2003, regardless of the transfer date.

HISTORY

Proposition 58, approved by the voters on November 4, 1986, added subdivision (h) to section 2 of article XIII A of the California Constitution. Subdivision (h) provides, in part, that the terms "purchased" and "change in ownership" shall not include the purchase or transfer between parents and their children of either a principal residence or the first \$1 million of the full cash value of all other real property. Proposition 193, approved on March 26, 1996, amended subdivision (h) to extend the exclusion, under limited circumstances, to transfers of real property from grandparents to grandchildren.

Revenue and Taxation Code section 63.1 provides the statutory implementation of Propositions 58 and 193. Among the requirements of section 63.1 is that a claim be filed with the county assessor. Initially, all transferors and all transferees were required to sign the claim form. Effective January 1, 2002, section 63.1(d) was amended to (1) eliminate the requirement for the transferor to sign the claim form and (2) require that only one of the transferees needs to sign the claim form, if there are multiple transferees.²

CHANGES TO THE SIGNATURE REQUIREMENT IN EFFECT JANUARY 1, 2003

Chapter 775 reinstates the requirement that the transferor, the transferor's legal representative, or the executor or administrator of the transferor's estate provide written certification that the transferor is a grandparent, parent, or child of the transferee. The amendments also require a declaration that the transferor is knowingly seeking the parent-child exclusion and will not file a

¹ All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

² Chapter 613, Statutes of 2001; see Letter To Assessors No. 2001/095, dated December 21, 2001.

claim to transfer the base year value under section 69.5 (Proposition 60/90/110 base year value transfer for persons over age 55 or disabled).

Chapter 775 made no change to subparagraph (d)(1)(D) (formerly subparagraph (d)(1)(C)) which provides that only one of the transferees needs to sign the claim form, if there are multiple transferees. However, there is no similar language for transferors. Thus, if there is more than one transferor, *each* transferor must sign the claim form.

Reinstating the transferor signature requirement means that a transferor, or the executor of an estate of a transferor, will regain the ability to determine how best to use the \$1 million dollar limit. Moreover, adding to the form a declaration that the transferor will not claim a base year value transfer on that property will serve as additional notice that the transferor may choose to *either* sign the parent-child claim and give the base year value to the child *or* claim a base year value transfer under section 69.5; both forms of relief, however, cannot be claimed.

RELATED ISSUES

Legal Representative. A legal representative is a person who has been duly authorized and has been given appropriate power (“power of attorney”) to file this type of claim. Attorneys, in general, do not have authorization to sign on behalf of their clients. Attorneys can sign only if they have been given the appropriate power to do so. For example, a mother’s attorney (her legal representative) does not have the power to sign on behalf of the mother’s child unless the child expressly gives that person the power to sign on the child’s behalf.

\$1 Million Limit. The parent-child exclusion is limited to the first \$1 million of real property, other than principal residences, transferred between an eligible transferor and an eligible transferee. The \$1 million exclusion applies only to the first \$1 million of the full cash value of “other real property” for which a claim has been filed and the exclusion granted.

For purposes of the parent-child exclusion, “full cash value” is defined in section 63.1(c)(5) as the full cash value as defined in section 2 of article XIII A of the California Constitution and section 110.1, as of the date *immediately prior* to the date of purchase or transfer (plus any inflation adjustments and the value of any new construction in progress). Section 110.1 provides that the full cash value is determined as of (1) the 1975 lien date or (2) the date property is purchased, is newly constructed, or changes ownership after the 1975 lien date. Thus, the value to be applied toward the \$1 million limit is the factored base year value on the roll just prior to the date of transfer to the eligible transferee. If the property has a market value on the roll (a Proposition 8 value) at the time of transfer, then it would not be to the transferee’s benefit to claim the parent-child exclusion. In these cases, either the claim should be denied, or the transferee should be given the opportunity to rescind the claim.

If parent-child claims are filed for multiple properties whose full cash values cumulatively exceed the \$1 million limit, then the *transfer date* becomes the determining factor for which properties will receive the property tax exclusion—properties are to be excluded in the order transferred, up to the \$1 million limit. If the transfer date is the same for multiple properties, the transferees must decide which properties will be excluded. Neither the date the claim is filed with the assessor nor the quarter in which the claim is reported to the State Board of Equalization is a determining factor.

For example, assume a parent transfers four properties to two children in 1993, 1994, 1995, and 1996. The factored base year values of the properties total \$600,000. There are no principal residences involved. Claims are properly filed and exclusions from change in ownership granted. Upon the parent's death in 2001, six additional properties transfer to the two children. Again, no principal residences are involved. The factored base year values of the six properties total \$650,000. Claims are filed for the six additional properties. The two children must decide which of the six properties transferred on the date of death will receive the remaining \$400,000 of the exclusion.

Protective Claims . Situations may occur where the filing requirements necessitate that the claim be filed before all the information required by subdivision (d) is known. This may occur, for example, where an executor has discretion in distributing the real estate holdings of an estate or where an estate will be subject to prolonged administration. In situations where all of the details have not been determined, the parties should file a protective claim with as much information as possible. Staff's opinion is that a court would not deny the section 63.1 exclusion where a reasonable effort was made to provide as much information as possible when the claim was filed. Thus, there may be exceptional cases where the assessor will need to use discretion in determining whether a valid claim has been filed timely.

Claim Forms. Section 63.1, subdivision (e), requires that the State Board of Equalization prescribe the form for claiming the exclusion. The claim forms (BOE-58-AH and BOE-58-G) were recently updated to reflect these changes in the signature requirements. The new forms (Rev. 8, 10-02) were mailed to you in Letter To Assessors No. 2002/071 (dated November 13, 2002). However, while the signature block was added for the transferor, we inadvertently omitted the new declaration. The declaration will be added to the forms during the 2003 regular forms-update process.

Enclosed is a copy of section 63.1, subdivision (d), with the changes in strikeout and underline format. If you have any questions regarding the parent-child or grandparent-grandchild exclusion, please contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG:grs
Enclosure

Section 63.1, subdivision (d) of the Revenue and Taxation Code as amended by Chapter 775, Statutes of 2003:

(d) (1) The exclusions provided for in subdivision (a) shall not be allowed unless the eligible transferee, the transferee's legal representative, or the executor or administrator of the transferee's estate files a claim with the assessor for the exclusion sought and furnishes to the assessor each of the following:

(A) A written certification by the transferee, the transferee's legal representative, or the executor or administrator of the transferee's estate, signed and made under penalty of perjury that the transferee is a grandparent, parent, child, or grandchild of the transferor and that the transferor is his or her parent, child, or grandparent. In the case of a grandparent-grandchild transfer, the written certification shall also include a certification that all the parents of the grandchild or grandchildren who qualify as children of the grandparents were deceased as of the date of the purchase or transfer and that the grandchild or grandchildren did or did not receive a principal residence excludable under paragraph (1) of subdivision (a) from the deceased parents, and that the grandchild or grandchildren did or did not receive real property other than a principal residence excludable under paragraph (2) of subdivision (a) from the deceased parents. The claimant shall provide legal substantiation of any matter certified pursuant to this subparagraph at the request of the county assessor.

(B) A written certification by the transferor, the transferor's legal representative, or the executor or administrator of the transferor's estate, signed and made under penalty of perjury that the transferor is a grandparent, parent, or child of the transferee and that the transferor is seeking the exclusion under this section and will not file a claim to transfer the base year value of the property under Section 69.5.

(C) A written certification shall also include either or both of the following:

(i) If the purchase or transfer of real property includes the purchase or transfer of residential real property, a certification that the residential real property is or is not the transferor's principal residence.

(ii) If the purchase or transfer of real property includes the purchase or transfer of real property other than the transferor's principal residence, a certification that other real property of the transferor that is subject to this section has or has not been previously sold or transferred to an eligible transferee, the total amount of full cash value, as defined in subdivision (c), of any real property subject to this section that has been previously sold or transferred by that transferor to eligible transferees, the location of that real property, the social security number of each eligible transferor, and the names of the eligible transferees of that property.

(D) If there are multiple transferees, the certification and signature may be made by any one of the transferees, if both of the following conditions are met:

(i) The transferee has actual knowledge that, and the certification signed by the transferee states that, all of the transferees are eligible transferees within the meaning of this section.

(ii) The certification is signed by the transferee as a true statement made under penalty of perjury.

(2) If the full cash value of the real property purchased by or transferred to the transferee exceeds the permissible exclusion of the transferor or the combined permissible exclusion of the transferors, in the case of a purchase or transfer from two or more joint transferors, taking into

Revenue and Taxation Code Section 63.1(d) as amended by Chapter 775, Statutes of 2003

account any previous purchases by or transfers to an eligible transferee from the same transferor or transferors, the transferee shall specify in his or her claim the amount and the allocation of the exclusion he or she is seeking. Within any appraisal unit, as determined in accordance with subdivision (d) of Section 51 by the assessor of the county in which the real property is located, the exclusion shall be applied only on a pro rata basis, however, and shall not be applied to a selected portion or portions of the appraisal unit.