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No. 2011/005

January 19, 2011

TO COUNTY ASSESSORS:

PARENT-CHILD AND GRANDPARENT-GRANDCHILD EXCLUSION:
SIGNATURE REQUIREMENTS

Section 2(h) of article XIII A of the California Constitution and Revenue and Taxation Code¹ section 63.1 provide that the terms "purchase" and "change in ownership" do not include the purchase or transfer between parents and their children of either a principal residence or the first \$1 million of the adjusted base year value of all other real property. This exclusion also applies, under limited circumstances, to transfers of real property from grandparents to grandchildren.² Section 63.1(c)(7) provides that "transfer" includes a transfer from an eligible transferor to an eligible transferee through the medium of an inter vivos or testamentary trust.

The exclusion under section 63.1 cannot be granted unless the transferee files a claim³ with the county assessor. Persons who can file a claim on behalf of a transferee include the transferee's legal representative and the executor or administrator of the transferee's estate. Effective January 1, 2011, the trustee of a transferee's trust can also file a claim on behalf of the transferee.

Section 63.1(d) also requires each transferor and one of the transferees, if there are multiple transferees, to provide a written certification attesting as to the parent-child or grandparent-grandchild relationship. Effectively, this certification is accomplished by both parties signing the claim form. Effective January 1, 2011, Senate Bill 1494 (Stats. 2010, ch. 654) amends section 63.1(d) to add a trustee to the list of persons who can sign a claim on behalf of either the transferor or transferee if real property is held in trust.

Thus, persons who can sign on behalf of the transferor include the following:

- The transferor
- The transferor's legal representative
- The executor or administrator of the transferor's estate
- The trustee of the transferor's trust

Similarly, persons who can sign on behalf of the transferee include the following persons:

- The transferee
- The transferee's legal representative

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

² See Letters To Assessors 97/32 and 2006/025.

³ BOE-58-AH and BOE-58-G

- The executor or administrator of the transferee's estate.
- The trustee of the transferee's trust

A legal representative is a person who has been duly authorized and has been given appropriate power to file this type of claim. Attorneys, in general, do not have authorization to sign a claim form 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.

If a transferor or transferee is unable to sign the claim due to incompetence or some other form of incapacity, it is generally accepted that duly appointed legal representatives, such as guardians or conservators, are entitled to perform every act that the individual for whom they are acting could have performed. Thus, if the transferee may file a claim and certify the relationship to the transferor, a duly appointed legal representative could do the same.

Under California law, a minor may own real property or an interest therein, but a minor may not convey or make contracts relating to real property. Therefore, a minor cannot sell or purchase property held directly in his or her own name, and, as a practical matter, transactions involving minor's interests in real property are usually conducted indirectly, through a guardianship or trust. The California Uniform Transfers to Minors Act provides a statutory mechanism for an adult "custodian" to hold, control, manage, and invest the custodial property for the benefit of a minor. In sum, the custodian has no beneficial interest in the property, but has powers akin to that of a trustee. Thus, for purposes of the parent-child or grandparent-grandchild exclusion, a minor child's custodian may file and/or sign a claim form on behalf of the minor child.

In addition, effective January 1, 2011, Senate Bill 1494 amends section 63.1(i) to provide that the trustee of the transferee's trust or the trustee of the transferor's trust is a person who can inspect a claim filed by that transferee or trustor.

If you have any questions regarding these changes, please contact the County-Assessed Properties Division at 916-274-3350.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

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