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No. 2013/030

May 29, 2013
(Correction)

TO COUNTY ASSESSORS:

CLAIM FOR REASSESSMENT EXCLUSION FOR TRANSFERS
BETWEEN PARENTS AND CHILDREN
AND TRANSFERS FROM GRANDPARENTS TO GRANDCHILDREN

Since Proposition 58 and Proposition 193 were adopted, the Board of Equalization (Board) has issued numerous Letters To Assessors regarding these two propositions. As a result of continued inquiries, this letter is issued to supplement those previous letters to reiterate the statutory filing requirement and the filing of amended claim forms within that timeframe.

History

On November 4, 1986, the voters of California adopted Proposition 58, which added subdivision (h) to section 2 of article XIII A of the California Constitution to provide that *purchase and change in ownership* do not include the purchase or transfer of (1) principal residences between parents and children, and (2) the first \$1 million of full cash value¹ of all other real property (other than principal residences) between parents and children. Section 63.1 was added to the Revenue and Taxation Code² to implement the parent-child exclusion provisions of Proposition 58 and applies to any purchases or transfers between parents and children that occur on or after November 6, 1986. On March 26, 1996, the voters of California adopted Proposition 193, which further amended section 2, subdivision (h) of article XIII A to exclude from the definition of change in ownership certain transfers from grandparents to their grandchildren. Section 63.1 was amended to reflect the grandparent-grandchild provisions.

Filing Periods

In order to grant either exclusion, a claim form must be filed with the assessor of the county where the property is located. Pursuant to section 63.1(e), the Board adopted Form BOE-58-AH, *Claim for Reassessment Exclusion for Transfer Between Parent and Child*, and Form BOE-58-G, *Claim for Reassessment Exclusion for Transfer From Grandparent to Grandchild*, for claiming eligibility for the parent-child and grandparent-grandchild exclusions. An exclusion may be granted as of the date of transfer if the proper claim form is received prior to the following dates:

¹ Defined in Revenue and Taxation Code sections 63.1(c)(5) and 110.1 as the adjusted base year value.

² All statutory references are to the Revenue and Taxation Code unless specified otherwise.

1. Within three years after the date of transfer or before a transfer to a third party.
2. Within six months after the date of supplemental or escape assessment issued as a result of the real property transfer for which the claim is filed.

If the notice of supplemental or escape assessment is mailed *before* the end of the first deadline (earlier of three year period or third party transfer), the transferee has until the latter of either the end of the first deadline or six months after the date of the notice to file a timely claim.

If all deadlines have expired and the transferee still owns the property, the transferee may file a claim and receive prospective relief only. Prospective relief applies to the lien date of the assessment year in which the claim is filed. The assessment year is the period between lien dates (that is, a calendar year).³ For example, prospective relief for a claim filed in 2010 will be applied as of the January 1, 2010 lien date for the 2010-11 fiscal year.

Incomplete Claim

A claim is incomplete unless it contains the following information:

- A written certification that the transferee is the parent, child, or grandchild of the transferor.
- A written certification that the transferor is the grandparent, parent, or child of the transferee.
- A written certification that any residential property transferred is or is not the transferor's principal residence.
- A written certification that real property, other than a principal residence, owned by the transferor that was eligible for the section 63.1 exclusion has or has not previously transferred to an eligible transferee, along with the total amount of assessed value of the real property previously transferred, the location of the real property, the Social Security Number of each eligible transferor, and the names of the eligible transferees.
- If the assessed value of the property transferred exceeds the permissible exclusion amount, the amount and the allocation of the exclusion sought must be specified.

An incomplete claim is not a valid claim for purposes of filing requirements. A claim that is incomplete or is in some way deficient is "timely filed" only if the minimum information is provided before the filing deadlines expire.

Protective Claim

As we stated in previous Letters To Assessors,⁴ situations may occur where the filing requirements necessitate that the claim be filed before all the information required by subdivision (d) of section 63.1 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

³ Revenue and Taxation Code section 118.

⁴ Letters To Assessors 91/76 and 2003/018.

prolonged administration. In situations where all such information is not known by the due date, the parties should file a protective claim with as much information as possible, and later amend that claim with any missing information as discussed below. 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.

Amended Claim

Although section 63.1 requires that a claim form must be filed in accordance with the instructions and deadlines described above, there is no authority expressly allowing or prohibiting amendments to previously filed claim forms. Such a need may arise however, for example, where a decedent has multiple children and the property distribution cannot be known with certainty prior to the filing of the claim form, or where a claim form was filed in anticipation of property being distributed to one child but is subsequently actually distributed to a different child.

We believe the theory for allowing the filing of protective claims is equally applicable to allow amended claims in such situations where a claim form is filed prior to all of the requisite information being known. Thus, we have advised taxpayers who fall into either of these situations that they should mark their claim as "Protective Claim" or "Amended Claim" and attach a letter of explanation as to why they have marked the claim in that manner.

An amended form should be accepted by a county assessor and should be considered to relate back to the date of the filing of the protective or originally filed claim. Of course, amended claim forms remain subject to an assessor's review to determine if the transfer met all the requirements for exclusion.

If you have questions regarding parent-child or grandparent-grandchild exclusions, please contact the County-Assessed Properties Division at 1-916-274-3350.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

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